



Montana Legislative History

Chapter: 716 Session L: 2023

Bill Number: HB 317

Checklist of Bill History

History and Final Status Sheet	x
Introduced Bill	X
Fiscal Note	n/a
Third Reading Bill	X
Final Version of Bill	X

House

Committee: Human Services

Hearing Date(s):

[2/1/23](#)

[2/21/23](#) (Exec. Action)

Senate

Committee: Public Health, Welfare, and Safety

Hearing Date(s):

[3/22/23](#)

[4/7/23](#) (Exec. Action)

Conference Committee

Hearing Date(s): [4/28/23](#)

Conference Committee Report: included

Compiler Notes

Compiled by: sg

Date: 10/1/24

Notes:

Bill Explorer - HB 317: Provide for the Montana Indian Child Welfare Act

Summary

Sponsoredby: [Windy Boy, Jonathan](#)
(D) HD 32

Progress		
Status	Date	Passed
Introduced	01/25/23	✓
Passed (H) Committee	02/22/23	✓
Passed House	02/28/23	✓
Passed (S) Committee	04/12/23	✓
Passed Senate	04/14/23	✓
To Governor	05/12/23	✓

Draft #	LC0897
Amendment(s)	No
Chapter #	716
Current Status	Chapter Number Assigned
Co-Sponsor(s)	None
Drafter	O'Connell, Sue
Requester	Windy Boy, Jonathan
Fiscal Note	No

Preintroduction Required	No
Category	General Bills
Subject(s)	Social Services, Family Law (see also: Minors), Indians,
Transmittal Date	03/03/23
Return Date	04/18/23

Sections Affected	Effective Date	Qualifier
Sections 1-30 and 32-53 and 55	07/01/2023	
Section 31 and 54	05/22/2023	

Bill Explorer - HB 317: Provide for the Montana Indian Child Welfare Act

Status

Date	Action	Committee	Yes Votes	No Votes
05/22/23	Chapter Number Assigned			
05/22/23	(H) Signed by Governor			
05/12/23	(H) Transmitted to Governor			
05/11/23	(S) Signed by President			
05/11/23	(H) Signed by Speaker			
05/09/23	(C) Printed - Enrolled Version Available			
05/09/23	(H) Returned from Enrolling			
05/05/23	(C) Printed - New Version Available			
05/03/23	(H) Sent to Enrolling			
05/02/23	(H) 3rd Reading Conference Committee Report Adopted		64	32
05/02/23	(H) Scheduled for 3rd Reading			
05/02/23	(S) 3rd Reading Conference Committee Report Adopted		37	13
05/02/23	(S) 2nd Reading Conference Committee Report Adopted		39	11
05/02/23	(H) 2nd Reading Conference Committee Report Adopted		73	25
05/02/23	(S) Scheduled for 2nd Reading			

Date	Action	Committee	Yes Votes	No Votes
05/02/23	(H) Scheduled for 2nd Reading			
04/28/23	(H) Conference Committee Report Received	Conference Committee on HB 317	3	3
04/28/23	(S) Conference Committee Report Received	Conference Committee on HB 317	3	3
04/28/23	(S) Hearing	Conference Committee on HB 317		
04/24/23	(S) Conference Committee Appointed			
04/21/23	(H) Conference Committee Appointed			
04/21/23	(H) 2nd Reading Senate Amendments Not Concurred		69	31
04/17/23	(S) Returned to House with Amendments			
04/14/23	(S) 3rd Reading Concurred		33	12
04/14/23	(S) 2nd Reading Concurred		38	12
04/12/23	(C) Printed - New Version Available			
04/12/23	(S) Committee Report--Bill Concurred as Amended	(S) Public Health, Welfare and Safety		
04/07/23	(S) Committee Executive Action--Bill Concurred as Amended	(S) Public Health, Welfare and Safety	7	2
04/05/23	(S) Hearing	(S) Public Health, Welfare and Safety		

Date	Action	Committee	Yes Votes	No Votes
03/22/23	(S) Hearing	(S) Public Health, Welfare and Safety		
03/21/23	(S) Hearing Canceled	(S) Judiciary		
03/16/23	(S) Hearing Canceled	(S) Judiciary		
03/16/23	(S) Rereferred to Committee	(S) Public Health, Welfare and Safety		
03/13/23	(S) Referred to Committee	(S) Judiciary		
03/01/23	(S) First Reading			
02/28/23	(H) Transmitted to Senate			
02/28/23	(H) 3rd Reading Passed		64	35
02/27/23	(H) 2nd Reading Passed		66	33
02/24/23	(C) Printed - New Version Available			
02/22/23	(H) Committee Report--Bill Passed as Amended	(H) Human Services		
02/21/23	(H) Committee Executive Action--Bill Passed as Amended	(H) Human Services	15	6
02/01/23	(H) Hearing	(H) Human Services		
02/01/23	(C) Amendments Available			
01/25/23	(H) First Reading			
01/25/23	(H) Referred to Committee	(H) Human Services		
01/24/23	(C) Introduced Bill Text Available Electronically			
01/24/23	(H) Introduced			
01/20/23	(C) Draft Delivered to Requester			

Date	Action	Committee	Yes Votes	No Votes
01/20/23	(C) Draft Ready for Delivery			
01/20/23	(C) Executive Director Final Review			
01/20/23	(C) Draft Ready for Delivery			
01/19/23	(C) Draft in Assembly			
01/19/23	(C) Executive Director Review			
01/19/23	(C) Bill Draft Text Available Electronically			
01/19/23	(C) Draft in Final Drafter Review			
01/17/23	(C) Draft in Input/Proofing			
01/16/23	(C) Bill Draft Text Available Electronically			
01/16/23	(C) Draft in Final Drafter Review			
01/13/23	(C) Draft in Input/Proofing			
01/10/23	(C) Draft to Drafter - Edit Review			
01/09/23	(C) Draft in Edit			
01/06/23	(C) Draft in Legal Review			
01/06/23	(C) Draft to Requester for Review			
11/01/22	(C) Draft Request Received			

Showing 1 to 64 of 64 entries

Fiscal

Date	Status
No matching results found	
Fiscal Documents	
No matching results found	
Fiscal Rebuttals	
No matching results found	

Amendments

Amendment	Condensed Version
HB0317.001.001_Amendments-in-Context_final-full.pdf	Yes
HB0317.001.002_Amendments-in-Context_final-full.pdf	Yes
HB0317.001.003_Amendments-in-Context_final-full.pdf	Yes
HB0317.001.005_combo_final-full.pdf	Yes
HB0317.002.001_Amendments-in-Context_final-full.pdf	Yes
HB0317.002.002_Amendments-in-Context_final-full.pdf	No
HB0317.002.004_combo_final-full.pdf	Yes
HB0317.003.001(1).pdf	No
HB0317.003.001.pdf	No
HB0317.003.001_Amendments-in-Context_final-full.pdf	Yes

Documents And Links

Previous Versions

[HB0317_X.pdf](#)

[HB0317_4.pdf](#)

[HB0317_3.pdf](#)

[HB0317_2.pdf](#)

[HB0317_1.pdf](#)

Other

None

Section 6. Section 70-33-429, MCA, is amended to read:

“70-33-429. Holdover remedies – consent to continued occupancy.

(1) If the tenant remains in possession without the landlord’s consent after expiration of the term of the rental agreement or other termination of the rental agreement, the landlord may bring an action for possession.

(2) *If the term is longer than month-to-month and the landlord terminates the agreement with cause and the tenant’s holdover is purposeful and not in good faith, the landlord may recover an amount of not more than 3 months’ rent or treble damages, whichever is greater.*

(3) *If the term of the rental is month-to-month and the landlord terminates the rental agreement without cause and issues a lawful 30-day notice and the tenant remains in the rental unit after the termination date, then the holdover is purposeful and the landlord may recover an amount not more than 3 months’ periodic rent or treble damages, whichever is greater.*

(2)(3) In an action for possession or unlawful holdover, the provisions of the *Montana Justice and City Court Rules of Civil Procedure*, Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is ~~10~~ 5 business days after service of summons and complaint, exclusive of the date of service.

(3)(4) If the landlord consents to the tenant’s continued occupancy, 70-33-201(2)(e) applies.”

Section 7. Effective date. [This act] is effective on passage and approval.

Approved May 22, 2023

CHAPTER NO. 716

[HB 317]

AN ACT ESTABLISHING THE MONTANA INDIAN CHILD WELFARE ACT; PROVIDING REQUIREMENTS FOR DETERMINING INDIAN STATUS AND INDIAN TRIBE; ESTABLISHING REQUIREMENTS FOR COURT PROCEEDINGS, EVIDENCE, AND CONSENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 40-6-405, 40-6-407, 40-6-413, 40-6-414, 40-6-1001, 40-7-135, 41-3-102, 41-3-103, 41-3-109, 41-3-128, 41-3-205, 41-3-301, 41-3-306, 41-3-307, 41-3-422, 41-3-423, 41-3-425, 41-3-427, 41-3-432, 41-3-437, 41-3-444, 41-3-609, 42-2-102, 42-2-604, 42-4-102, 42-4-103, 42-4-203, 42-4-209, 42-5-101, 42-5-107, 47-1-104, AND 52-2-117, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

WHEREAS, there is, at the present time, a court case before the United States Supreme Court known as *Haaland v. Brackeen*, No. 21-376, that has the potential to overturn or modify the Indian Child Welfare Act in its current form, and the Legislature seeks to provide guidance for Indian child protection cases in the interim as this case is decided. The Legislature does not expect this to be the final word on how we deal with Indian child welfare issues or how we seek to provide for all of Montana’s children within the child protection system.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 18] may be cited as the “Montana Indian Child Welfare Act”.

Section 2. Legislative findings – purpose. (1) The legislature recognizes that in possibly no other area of concurrent tribal and state law is it more important that tribal sovereignty be respected than in an area as

socially and culturally determinative as family relationships. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the child, or the interests of the child's tribe.

(2) The legislature further finds that when placement away from the parent or Indian custodian is necessary for the Indian child's safety, the state is committed to a placement that reflects and honors the unique values of the Indian child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.

Section 3. Definitions. As used in [sections 1 through 18], the following definitions apply:

(1) "Active efforts" means affirmative, active, thorough, and timely efforts meeting the requirements of [section 12] that are intended primarily to maintain or reunite an Indian child with the child's family and that are tailored to the facts and circumstances of the case.

(2) "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(3) (a) "Child custody proceeding" means any state or private proceeding, other than an emergency proceeding, that may culminate in a foster care placement, termination of parental rights, preadoptive placement, or adoptive placement.

(b) The term does not include a placement based on:

(i) an act that, if committed by an adult, would be considered a crime; or

(ii) an award, in a dissolution proceeding, of custody to one of the child's parents.

(4) "Court of competent jurisdiction" means a court that has jurisdiction over the relevant subject matter under federal, state, or tribal law.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Foster care placement" means an action removing an Indian child from the child's parent or Indian custodian for temporary placement in a foster home or institution or with a relative, guardian, conservator, or suitable other person under which the parent or Indian custodian may not have the child returned on demand but parental rights have not been terminated.

(7) "Indian" means a person who is a member of an Indian tribe or who is an Alaska Native and a member of a regional corporation as established in 43 U.S.C. 1606.

(8) "Indian child" means an unmarried Indian person who is under 18 years of age and who is:

(a) a member of an Indian tribe; or

(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(9) (a) "Indian child's family" or "extended family member" means an individual defined by the law or custom of the Indian child's tribe as a relative of the Indian child.

(b) If the Indian child's tribe does not identify family members by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, cousin, stepparent, or stepgrandparent. A stepparent or stepgrandparent may be considered a family member even following termination of the marriage.

(10) “Indian child’s tribe” means a tribe or tribes in which an Indian child is a member or is determined eligible for membership as provided in [section 6 5].

(11) “Indian custodian” means an Indian person who under tribal law, tribal custom, or state law has legal or temporary physical custody of an Indian child or to whom the parent has transferred temporary care, physical custody, and control of the Indian child.

(12) (a) “Indian tribe” or “tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians.

(b) The term includes an Alaska Native village as defined in 43 U.S.C. 1602.

(13) “Member” or “membership” means a determination by an Indian tribe that an individual is a member of or eligible for membership in that Indian tribe.

(14) (a) “Parent” means a biological parent of an Indian child or an individual who has lawfully adopted an Indian child, including adoptions made as tribal customary adoptions.

(b) The term does not include an unwed father whose paternity has not been acknowledged or established under Title 40, chapter 6, part 1, or the applicable laws of another state.

(15) “Preadoptive placement” means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement.

(16) “Termination of parental rights” means any action resulting in the termination of the parent-child relationship.

(17) “Tribal court” means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings. The term includes but is not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, and an administrative body of an Indian tribe vested with authority over child custody proceedings.

Section 4. Determination of Indian status – confidentiality of records. (1) (a) A party seeking the foster care placement of, termination of parental rights over, or adoption of a child shall use due diligence to determine whether the child is an Indian child. The inquiry must be made in consultation with:

(i) the child’s parent or parents;

(ii) an individual who has custody of the child or with whom the child resides;

(iii) any other individual who reasonably may be expected to have information regarding the child’s possible membership or eligibility for membership in an Indian tribe; and

(iv) any Indian tribe of which the child may be a member or may be eligible for membership. The consultation with a tribe must be made by contacting the tribe in writing.

(b) The inquiries required under this subsection (1) must be documented in the record.

(2) Preliminary contacts for the purpose of using due diligence to determine a child’s possible Indian status do not constitute legal notice as required by [section 7].

(3) A court shall ask each participant in an emergency proceeding or voluntary or involuntary child custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry must be made at the commencement of the proceeding and all responses must be on the record. The court shall instruct the parties to inform the court if they

subsequently receive information that provides reason to know the child is an Indian child.

(4) If there is reason to know the child is an Indian child but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall confirm, by way of a report, declaration, or testimony included in the record, that the department or other party used due diligence to identify and work with all tribes of which there is reason to know the child may be a member or eligible for membership to verify whether the child is a member or eligible for membership.

(5) A court, on conducting the inquiry required in subsection (3), has reason to know that a child involved in an emergency proceeding or child custody proceeding may be an Indian child if:

(a) any participant in the proceeding, officer of the court involved in the proceeding, Indian tribe, Indian organization, or agency informs the court that:

(i) the child is an Indian child; or

(ii) it has discovered information indicating that the child is an Indian child;

(b) the child who is the subject of the proceeding gives the court reason to know the child is an Indian child;

(c) the court is informed that the residence or domicile of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(d) the court is informed that the child is or has been a ward of a tribal court;

(e) the court is informed that either of the parents or the child possesses an identification card indicating membership in an Indian tribe; or

(f) the court determines from additional information provided that the child may be an Indian child.

(6) (a) When seeking verification of a child's Indian status during a voluntary proceeding, the court shall keep relevant documents pertaining to the inquiry confidential and under seal if a consenting parent expresses either orally or in writing a desire for anonymity. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with [sections 1 through 18], including the obligation to verify whether the child is an Indian child.

(b) A tribe receiving information related to an inquiry of a child's status as an Indian child must keep documents and information confidential.

(7) A written determination by an Indian tribe regarding the child's status as an Indian child is conclusive that the child is an Indian child.

Section 5. Determination of Indian tribe. (1) If the Indian child is a member of or eligible for membership in only one tribe, that tribe must be designated as the Indian child's tribe.

(2) If the Indian child meets the definition of Indian child through more than one tribe, deference must be given to the tribe in which the Indian child is already a member, unless otherwise agreed to by the tribes.

(3) (a) If the Indian child meets the definition of Indian child through more than one tribe because the child is a member in more than one tribe or the child is not a member of but is eligible for membership in more than one tribe, the court shall provide the opportunity in any involuntary child custody proceeding for the tribes to determine which tribe should be designated as the Indian child's tribe.

(b) If the tribes are able to reach an agreement, the court shall designate the agreed-on tribe as the Indian child's tribe.

(c) If the tribes are unable to reach an agreement, for the purposes of [sections 1 through 18] the court shall designate as the child's tribe the tribe

with which the child has the more significant contacts as the Indian child's tribe. In making the designation, the court shall consider:

- (i) the preference of the parents for membership of the child;
- (ii) the length of the child's past residence or domicile on or near the reservation of each tribe;
- (iii) the tribal membership of the child's custodial parent or Indian custodian;
- (iv) the interest asserted by each tribe in the child custody proceeding;
- (v) whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and
- (vi) self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify with a tribe.

(4) A determination of the Indian child's tribe for the purposes of [sections 1 through 18] does not constitute a determination for any other purpose.

Section 6. Jurisdiction – transfer of jurisdiction. (1) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe unless:

- (a) the tribe has consented to the state's concurrent jurisdiction pursuant to Public Law 280 or 25 U.S.C. 1919;
- (b) the tribe has expressly declined to exercise its exclusive jurisdiction; or
- (c) the state is exercising emergency jurisdiction in compliance with [section 14].

(2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding, the Indian tribe may retain exclusive jurisdiction regardless of the residence or domicile of the child.

(3) Except as provided in subsection (5), in a child custody proceeding involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe on the motion of any of the following:

- (a) either of the Indian child's parents;
- (b) the Indian child's Indian custodian; or
- (c) the Indian child's tribe.

(4) If the Indian child's tribe has not formally intervened, the moving party shall serve a copy of the motion and all supporting documents on the tribal court to which the moving party seeks transfer.

(5) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court may not transfer the proceeding.

(6) (a) If a state court believes or any party asserts that good cause to deny transfer exists, the reasons for that belief or assertion must be provided orally or in writing on the record and to the parties to the child custody proceeding. Any party to the child custody proceeding must have the opportunity to provide the court with the reasons that good cause exists to deny transfer of the proceeding.

- (b) In determining whether good cause exists, the court may not consider:
 - (i) whether the child custody proceeding is at an advanced stage;
 - (ii) whether there have been prior proceedings involving the child for which no petition to transfer was filed;
 - (iii) whether transfer could affect the placement of the child;
 - (iv) the child's cultural connections with the tribe or its reservation; or
 - (v) socioeconomic conditions or any negative perception of the tribal or bureau of Indian affairs social services or judicial systems.

(c) If the court denies transfer of jurisdiction, the court shall state its reasons for the denial orally on the record or in a written order.

(7) (a) Following entry of an order transferring jurisdiction to the Indian child's tribe and pending receipt of a tribal court order accepting jurisdiction, the state court:

(i) may conduct additional hearings and enter orders that are in the best interests of the child and strictly comply with the requirements of the federal Indian Child Welfare Act and [sections 1 through 18]; and

(ii) may not enter a final order in a child custody proceeding, except an order dismissing the proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the child was removed.

(b) On receipt of an order from a tribal court accepting jurisdiction, the court shall:

(i) dismiss the child custody proceeding with prejudice; and

(ii) expeditiously provide the tribal court with all records related to the proceeding, including but not limited to the pleadings and any court record. The state court shall work with the tribal court to ensure the transfer of the custody of the Indian child and the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

(8) If the Indian child's tribe accepts jurisdiction, the state court shall enter an order relieving the office of the state public defender and any public defender assigned pursuant to 41-3-425 and 47-1-104 from further representation.

(9) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody proceeding in compliance with the federal Indian Child Welfare Act, [sections 1 through 18], and any applicable state-tribal agreement.

Section 7. Notice. (1) The petitioning party shall provide notice of the initial petition filed in an involuntary child custody proceeding and a petition seeking termination of parental rights when the petitioning party knows or has reason to know that the child is or may be an Indian child. Notice must be provided as required in subsection (2) to:

(a) the Indian child's parent or Indian custodian; and

(b) the child's tribe or tribes.

(2) (a) Notice to the tribe must be made by certified mail, return receipt requested, and must meet the requirements of subsection (4). The notice must be sent to the person designated in the most current Federal Register as the designated tribal agent for service of notice for the purposes of the federal Indian Child Welfare Act. The petitioning party shall file the return receipt with the court as proof of notice.

(b) Notice to the parent or Indian custodian must be made by personal service, or alternative means as provided in 41-3-422 if personal service cannot be accomplished, and must meet the requirements of subsection (4).

(c) If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice must be given to the secretary of the U.S. department of the interior by certified mail, return receipt requested, in accordance with the provisions of 25 CFR, part 23.

(d) Service of all other petitions, other than the initial petition and a petition for termination of parental rights, must be served on the tribe by first-class mail unless otherwise directed by the tribe's designated agent for notice.

(e) When notice of the initial petition and a petition for termination of parental rights to the parent or Indian custodian is required under this subsection (2), personal service, and alternative means of personal service

when personal service cannot be accomplished, as provided in 41-3-422, takes the place of certified mail with return receipt requested.

(3) A foster care placement or a termination of parental rights proceeding may not be held until at least 10 days after receipt of the notice by the parent or Indian custodian, the tribe, and, if applicable, the secretary. The parent, Indian custodian, or tribe shall, on request, be granted up to 20 additional days to prepare for the proceeding. The 10-day notice requirement does not limit a court's ability to hold an emergency protective services hearing pursuant to 41-3-306.

(4) Notice provided under this section must be in clear and understandable language and include the following:

(a) the child's name, date of birth, and place of birth;

(b) all known names of the child's parents, including maiden, married, and former names or aliases;

(c) the parents' dates of birth, places of birth, and tribal enrollment numbers, if known;

(d) the names, dates of birth, places of birth, and tribal enrollment information of other direct lineal ancestors of the child, if known;

(e) the name of each Indian tribe in which the child is a member or may be eligible for membership if a biological parent is a member; and

(f) a copy of the petition, complaint, or other document by which the child custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing.

Section 8. Full faith and credit. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe that are applicable to Indian child custody proceedings.

Section 9. Right to counsel. In a child custody proceeding under [sections 1 through 18] in which the court determines that the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian has the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child pursuant to 41-3-425.

Section 10. Right of access to evidence. Each party to a child custody proceeding involving an Indian child has the right to examine all reports or other documents filed with the court on which any decision with respect to the proceeding may be based.

Section 11. Qualified expert witness--requirements--prohibitions.

(1) A qualified expert witness is an individual who provides testimony in a child custody proceeding under [sections 1 through 18]. The purpose of the testimony is to assist a court in determining whether the continued custody of the child by or the return of the child to the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The parties may not waive the requirement for the qualified expert witness testimony.

(2) The petitioning party shall consult with the Indian child's tribe on the selection of the qualified expert witness, including asking whether the tribe has a list of preferred qualified expert witnesses. To the extent possible, the petitioning party shall use an individual preferred by the tribe.

(3) A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and must be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe.

(4) (a) If the petitioner is the department, the child protection specialist assigned to the case and the child protection specialist's supervisor may not testify as qualified expert witnesses in the case.

(b) Nothing in this subsection (4) may be construed as barring:

(i) the child protection specialist or the child protection specialist's supervisor from testifying as an expert witness for other purposes in a proceeding under [sections 1 through 18]; or

(ii) the petitioner or another party in a proceeding under [sections 1 through 18] from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court, including the determination of whether the continued custody of the Indian child by or return of the Indian child to the parent, parents, or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

Section 12. Active efforts. (1) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that the efforts have proven unsuccessful.

(2) The court shall make written findings that the petitioning party has provided active efforts and the efforts must be documented in detail in the record.

(3) If the department is involved in the child custody proceeding, active efforts must include assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.

(4) (a) To the maximum extent possible, active efforts must be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include but are not limited to:

(i) conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(ii) identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining the services;

(iii) identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;

(iv) conducting or causing to be conducted a diligent search for the Indian child's extended family members and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;

(v) offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's tribe;

(vi) taking steps to keep siblings together whenever possible;

(vii) supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(viii) identifying community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the child's family, in accessing and using the resources;

(ix) monitoring progress and participation in services;

(x) considering alternative ways to address the needs of the Indian child's parents and, when appropriate, the family, if the optimum services do not exist or are not available; and

(xi) providing postreunification services and monitoring.

(b) Referral to a service or program does not constitute an active effort if the referral was the sole action taken.

Section 13. Evidentiary requirements. (1) A court may not order a foster care placement of an Indian child unless:

(a) the petitioning party has provided clear and convincing evidence that active efforts were made to provide remedial services and rehabilitative programs to prevent the breakup of an Indian family and that the efforts were unsuccessful; and

(b) clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, to demonstrate that continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(2) The court may not terminate parental rights of the parents of an Indian child unless evidence beyond a reasonable doubt is presented that:

(a) active efforts were made to prevent the breakup of the Indian family and the efforts were unsuccessful; and

(b) continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The evidence must include testimony of one or more qualified expert witnesses.

(3) (a) Evidence required under this section must show a causal relationship between the specific conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the child who is the subject of the child custody proceeding.

(b) Evidence showing only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

Section 14. Emergency removal of Indian child. (1) Nothing in [sections 1 through 18] may be construed to prevent the department from removing an Indian child from the Indian child's parent or Indian custodian or prevent the emergency placement of the Indian child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the Indian child.

(2) An emergency removal or placement of an Indian child under state law must terminate immediately when the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(3) A state court shall:

(a) make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

(b) promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended;

(c) at any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child; and

(d) immediately terminate or direct the department to terminate the emergency removal if the court or department possesses sufficient evidence to

determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(4) An emergency proceeding may be terminated by any of the following actions:

(a) initiation of a child custody proceeding subject to the provisions of the federal Indian Child Welfare Act and [sections 1 through 18];

(b) transfer of the child to the jurisdiction of the appropriate Indian tribe; or

(c) restoring the child to the parent or Indian custodian.

(5) A petition for a court order authorizing the emergency removal or placement, or its accompanying documents, must contain a statement of the risk of imminent physical damage or harm to the Indian child, any evidence that the emergency removal or placement continues to be necessary to prevent the damage or harm, and if available:

(a) the full name, age, and last known address of the Indian child;

(b) the name and address of the child's parents and Indian custodians, if any;

(c) the steps taken to provide notice to the child's parents, Indian custodians, and tribe about the emergency proceeding;

(d) if the child's and Indian custodians are unknown, a detailed explanation of the efforts made to locate and contact the individuals, including contact with the appropriate bureau of Indian affairs regional director;

(e) the residence or the domicile of the Indian child;

(f) if either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the tribe affiliated with that reservation or village;

(g) the tribal affiliation of the child and of the parents or Indian custodians;

(h) a specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to remove the child;

(i) if the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of the efforts made and being made to contact the tribe and transfer the child to the tribe's jurisdiction; and

(j) a statement of the efforts made to assist the parents or Indian custodians so the Indian child may be safely returned to the parents or Indian custodians.

(6) Contact made to provide notice of an emergency removal and reported pursuant to subsection (5)(c) does not constitute the notice required under [section 7] for the purposes of subsequent dependency, termination of parental rights, or adoption proceedings.

(7) An emergency proceeding regarding an Indian child may not be continued for more than 30 days unless the court determines that:

(a) restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;

(b) the court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and

(c) it has not been possible to initiate a child custody proceeding.

Section 15. Consent. (1) At an involuntary foster care placement hearing, a stipulation or consent by the parent or Indian custodian is not valid unless the court certifies on the record that the terms and consequences of the stipulation or consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall certify on the record that the parent or Indian custodian fully understood the explanation in English or that the explanation was translated into a language that the parent or Indian custodian understood.

(2) In a voluntary proceeding for foster care placement or termination of parental rights, consent by a parent or Indian custodian is not valid unless the consent is:

(a) executed in writing and recorded before a judge of a court of competent jurisdiction; and

(b) accompanied by the judge's written certificate that:

(i) the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian; and

(ii) the parent or Indian custodian fully understood the explanation in English or that the explanation was translated into a language that the parent or Indian custodian understood.

(3) Voluntary consent for release of custody given prior to or within 10 days after the birth of an Indian child may not be considered valid.

(4) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care placement at any time. On withdrawal of consent, the Indian child must be returned to the parent or Indian custodian.

(5) In a voluntary proceeding for termination of parental rights to or adoptive placement of an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an order terminating parental rights or a final decree of adoption, and the Indian child must be returned to the parent.

(6) (a) After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption on the grounds that consent was obtained through fraud or duress. On a finding that consent was obtained through fraud or duress, the court shall vacate the decree and return the Indian child to the parent.

(b) An adoption that has been effective for at least 2 years may not be invalidated under this section unless otherwise allowed by law.

Section 16. Improper removal of Indian child. If a petitioner in a child custody proceeding under [sections 1 through 18] has improperly removed an Indian child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the Indian child to the parent or Indian custodian unless returning the Indian child to the parent or Indian custodian would subject the Indian child to substantial and immediate danger or threat of substantial or immediate danger.

Section 17. Removal of Indian child from adoptive or foster care placement. (1) If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the Indian child, the biological parent or prior Indian custodian may petition to have the Indian child returned to the custody of the parent or Indian custodian. The court shall grant the request unless there is a showing by clear and convincing evidence that return of custody to the biological parent or Indian custodian is not in the best interests of the child.

(2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home for the purposes of further foster care or a preadoptive or adoptive placement, the placement must be made in accordance with [sections 1 through 18] unless an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

Section 18. Placement preferences. (1) When an emergency removal, foster care placement, or preadoptive placement of an Indian child is necessary, the petitioning party shall, in the absence of good cause to the contrary, place the Indian child in the least restrictive setting that:

- (a) most closely approximates a family situation;
- (b) is in reasonable proximity to the Indian child's home; and
- (c) allows for the Indian child's special needs, if any, to be met.

(2) In a foster care or preadoptive placement, preference must be given, in the absence of good cause to the contrary, to the Indian child's placement with one of the following, in descending order of priority:

- (a) an Indian child's extended family member;
- (b) a foster home licensed, approved, or specified by the Indian child's tribe;
- (c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(d) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

(3) In the absence of good cause to the contrary, in an adoptive or other permanent placement of an Indian child, preference must be given to a placement with one of the following, in descending order of priority:

- (a) extended family members;
- (b) an Indian family of the same tribe as the Indian child;
- (c) another Indian family.

(4) Notwithstanding the placement preferences listed in subsections (2) and (3), if a different order of placement preference is established by the Indian child's tribe, the court or agency implementing the placement shall follow the order of preference established by the tribe if the placement is in the least restrictive setting appropriate to the particular needs of the Indian child and within reasonable proximity to the child's home.

(5) When appropriate, the preference of the Indian child or the child's parent must be considered by the court.

(6) The standards to be applied in meeting the preference requirements of this section must be the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside or with which the parent or extended family members maintain social and cultural ties.

(7) Nothing in this section prevents the department or the court from placing an Indian child with a parent to effectuate a permanency plan regardless of the parent's relationship to the Indian child's tribe.

(8) (a) If any party asserts that good cause to not follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child custody proceeding and the court.

(b) The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:

(i) the request of one or both of the Indian child's parents on attestation that they have reviewed the placement options, if any, that comply with the order of preference provided for in subsections (2) and (3);

(ii) the request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

(iii) the presence of a sibling attachment that can be maintained only through a particular placement;

(iv) the extraordinary physical, mental, or emotional needs of the Indian child, including but not limited to specialized treatment services that may

be unavailable in the community where families who meet the placement preferences live; or

(v) the unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but no suitable placement was found. For the purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

Section 19. Section 40-6-405, MCA, is amended to read:

"40-6-405. Surrender of newborn to emergency services provider – temporary protective custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

(2) The emergency services provider shall make a reasonable effort to do all of the following:

(a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;

(b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;

(c) if possible, ascertain whether the newborn has a tribal affiliation and, if so, ascertain relevant information pertaining to any Indian heritage of the newborn;

(d) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:

(i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;

(ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;

(iii) the parent may not receive personal notice of the court proceedings begun by the department;

(iv) information that the parent provides to an emergency services provider will not be made public;

(v) a parent may contact the department for more information and counseling; and

(vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the *federal Indian Child Welfare Act*, 25 U.S.C. 1901, et seq., and [sections 1 through 18].

(3) After providing a parent with the information described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:

(a) encourage the parent to provide any relevant family or medical information, including information regarding any tribal affiliation;

(b) provide the parent with information that the parent may receive counseling or medical attention;

(c) inform the parent that information that the parent provides will not be made public;

(d) ask the parent for the parent's name;

(e) inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the parent to identify the other parent;

(f) inform the parent that the department can provide confidential services to the parent; and

(g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a hearing to terminate parental rights.”

Section 20. Section 40-6-407, MCA, is amended to read:

“40-6-407. Assumption of care, custody, and control by department – placement of child – presumptions – Montana birth certificate.

(1) Upon receipt of notice under 40-6-406, the department shall:

(a) immediately assume the care, control, and temporary protective custody of the newborn;

(b) if a parent is known and willing, immediately meet with the parent;

(c) make a temporary placement of the newborn;

(d) immediately request assistance from law enforcement officials to investigate and determine, through the national center for missing and exploited children and any other national and state missing children information programs, whether the newborn is a missing child;

(e) not later than 48 hours after assuming the care, control, and temporary protective custody of the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, *and, if applicable, [sections 1 through 18]*, requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date; and

(f) within 30 days, make reasonable efforts to identify and locate a parent who did not surrender the newborn. If the identity and address of that parent are unknown, the department shall provide notice by publication in a newspaper of general circulation in the county where the newborn was surrendered.

(2) The department, after assuming the care, custody, and control of a newborn under subsection (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not required to search for relatives of the newborn as a placement or permanency option or to implement other placement requirements that give preference to relatives if the department does not have information as to the identity of the newborn or either of the newborn's parents. The department shall place the newborn with prospective adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding the newborn's medical history, date of birth, or age if the department has that information.

(3) A newborn surrendered under 40-6-405 is presumed to have been born in Montana unless the biological parent otherwise informs the department or the emergency services provider to whom the newborn is surrendered.

(4) A Montana birth certificate may be issued based on the presumption of birth in Montana as provided in subsection (3). A birth certificate issued to a newborn surrendered under 40-6-405 must provide a date of birth based on either the actual date of birth, if known, or on the date of birth determined by the physician who performs the medical examination of the newborn under 40-6-406.”

Section 21. Section 40-6-413, MCA, is amended to read:

“40-6-413. Custody action – order. Based on the court’s finding of the newborn’s best interest under 40-6-412, the court may issue an order:

(1) granting legal or physical custody, or both, of the newborn to the parent and either retaining or relinquishing jurisdiction; or

(2) denying custody of the newborn to the parent and referring the matter to the department or county attorney for proceedings under Title 41, chapter 3, and, if applicable, [sections 1 through 18].”

Section 22. Section 40-6-414, MCA, is amended to read:

“40-6-414. Presumption of waiver of parental rights – department to file petition. (1) *Except as provided in [section 15],* a parent who surrenders a newborn under 40-6-405 and who does not file a custody action under 40-6-411 is presumed to have knowingly waived the parent’s parental rights to the newborn.

(2) If a custody action is not filed under 40-6-411 or if the parent is denied custody of the newborn under 40-6-413, the department shall file a petition under Title 41, chapter 3, part 4, *or, if applicable, [sections 1 through 18],* requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date.”

Section 23. Section 40-6-1001, MCA, is amended to read:

“40-6-1001. Petition for termination – criteria – process. (1) A district court may order a termination of the parent-child legal relationship after the filing of a petition pursuant to this section alleging the factual grounds for termination as provided for in subsection (2).

(2) Grounds for termination pursuant to this section exist when the parent of a child:

(a) is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born; or

(b) at a fact-finding hearing is found by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act *and [sections 1 through 18],* if applicable, to have committed an act of sexual intercourse without consent, sexual assault, or incest that caused the child to be conceived.

(3) The court’s order must state the reasons for the decision.

(4) The victim of the crime or act may file a petition pursuant to this section. If the victim is a minor, the victim’s parent or guardian may file a petition on the victim’s behalf.

(5) The respondent to the petition has the right to counsel in all proceedings held pursuant to the petition.

(6) Before termination of the parent-child legal relationship may be ordered, the court shall determine whether the provisions of 40-6-1002 and 40-6-1003 have been followed.

(7) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

(8) (a) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except:

(i) the right of the child to inherit from the parent; and

(ii) that nothing in this section may be construed to relieve the parent whose rights are terminated as provided in this part of any child support obligations as provided in Title 40, chapters 4 and 5.

(b) An order or decree entered pursuant to this part may not disentitle a child to any benefit due to the child from a third person, including but not limited to an Indian tribe, an agency, a state, or the United States.”

Section 24. Section 40-7-135, MCA, is amended to read:

“40-7-135. Application to Indian tribes. (1) A child custody proceeding that pertains to an Indian child as defined in the *federal* Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 3] is not subject to this chapter to the extent that it is governed by the *federal* Indian Child Welfare Act or [sections 1 through 18].

(2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, 40-7-134 through 40-7-140, and part 2 of this chapter.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this chapter.”

Section 25. Section 41-3-102, MCA, is amended to read:

“41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) “Abandon”, “abandoned”, and “abandonment” mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) “A person responsible for a child’s welfare” means:

(a) the child’s parent, guardian, or foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child’s welfare in a residential setting.

(3) “Abused or neglected” means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) “Adequate health care” means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial

authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare;

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(C) any form of child sex trafficking or human trafficking.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act is or *[sections 1 through 18]* are applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Child protection specialist" means an employee of the department who investigates allegations of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

(9) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(10) "Department" means the department of public health and human services provided for in 2-15-2201.

(11) "Family engagement meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(12) "Indian child" ~~means any unmarried person who is under 18 years of age and who is either:~~

(a) ~~a member of an Indian tribe; or~~

(b) ~~eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe~~ *has the meaning provided in [section 3].*

(13) "Indian child's tribe" means:

(a) ~~the Indian tribe in which an Indian child is a member or eligible for membership; or~~

(b) ~~in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts~~ *has the meaning provided in [section 3].*

(14) "Indian custodian" ~~means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom~~

~~temporary physical care, custody, and control have been transferred by the child's parent *has the meaning provided in [section 3].*~~

~~(15) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:~~

~~(a) the state of Montana; or~~

~~(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law *has the meaning provided in [section 3].*~~

(16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(17) "Parent" means a biological or adoptive parent or stepparent.

(18) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(19) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(20) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(21) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(23) (a) "Protective services" means services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, written prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act or *[sections 1 through 18]* means:

~~(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;~~

~~(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or~~

~~(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general~~

(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to a family organization and child-rearing practices;

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

(26) "Qualified individual" means a trained professional or licensed clinician who:

(a) has expertise in the therapeutic needs assessment used for placement of youth in a therapeutic group home;

(b) is not an employee of the department; and

(c) is not connected to or affiliated with any placement setting in which children are placed.

(27) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(28) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(29) “Safety and risk assessment” means an evaluation by a child protection specialist following an initial report of child abuse or neglect to assess the following:

- (a) the existing threat or threats to the child’s safety;
- (b) the protective capabilities of the parent or guardian;
- (c) any particular vulnerabilities of the child;
- (d) any interventions required to protect the child; and
- (e) the likelihood of future physical or psychological harm to the child.

(30) (a) “Sexual abuse” means the commission of sexual assault, sexual intercourse without consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant’s or toddler’s genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child’s welfare.

(31) “Sexual exploitation” means:

(a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603;

(b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

(c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

(32) “Therapeutic needs assessment” means an assessment performed by a qualified individual within 30 days of placement of a child in a therapeutic group home that:

(a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool;

(b) determines whether the needs of the child can be met with family members or through placement in a youth foster home or, if not, which appropriate setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals for the child as specified in the child’s permanency plan; and

(c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

(33) “Treatment plan” means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(34) (a) “Withholding of medically indicated treatment” means the failure to respond to an infant’s life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician’s or physicians’ reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician’s or physicians’ reasonable medical judgment:

- (i) the infant is chronically and irreversibly comatose;
- (ii) the provision of treatment would:
 - (A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (34), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(35) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 26. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction and venue. (1) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 18], in all matters arising under this chapter, a person is subject to a proceeding under this chapter and the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court;

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose;

(d) a youth or youth's parent or guardian who resides in Montana;

(e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in Montana.

(2) Venue is proper in the county where a youth is located or has resided within 180 days before the filing of a petition under this part or a county where the youth's parent or guardian resides or has resided within 180 days before the filing of a petition under this part."

Section 27. Section 41-3-109, MCA, is amended to read:

"41-3-109. Proceedings subject to Indian Child Welfare Act Acts.

If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 3], the proceeding is subject to the federal Indian Child Welfare Act and [sections 1 through 18]."

Section 28. Section 41-3-128, MCA, is amended to read:

"41-3-128. Certificate requirements – supervision – fees. (1) An applicant for certification as a child protection specialist shall:

(a) successfully complete a course in child protection, as defined by the department by rule, which must include training in:

(i) ethics;

(ii) governing statutory and regulatory framework;

(iii) role of law enforcement;

(iv) crisis intervention techniques;

(v) childhood trauma research;

(vi) evidence-based practices for family preservation and strengthening;
and

(vii) the provisions of the *federal* Indian Child Welfare Act, 25 U.S.C. 1902, et seq., and [sections 1 through 18]; and

(b) demonstrate the applicant's ability to perform all essential functions of the certified child protection role by earning a passing score on a competency examination developed pursuant to 41-3-130.

(2) As a prerequisite to the issuance of a certificate, the department shall require the applicant to submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(3) An applicant who has a history of criminal convictions has the opportunity to demonstrate to the department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny the certificate if it determines that the applicant is not sufficiently rehabilitated."

Section 29. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality – disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family engagement meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the department.

(p) the news media, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act or *[sections 1 through 18]*;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) an attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a child protection specialist, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county or regional interdisciplinary child information and school safety team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) (a) The records described in subsection (3) must be disclosed to a member of the United States congress or a member of the Montana legislature if all of the following requirements are met:

(i) the member receives a written inquiry regarding a child and whether the laws of the United States or the state of Montana that protect children from abuse or neglect are being complied with or whether the laws need to be changed to enhance protections for children;

(ii) the member submits a written request to the department requesting to review the records relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the child whose records are to be reviewed, and any other information that will assist the department in locating the records.

(iii) before reviewing the records, the member:

(A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and

(B) receives from the department an orientation of the content and structure of the records.

(b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for the member to view but may not be copied, recorded, photographed, or otherwise replicated by the member, and must remain solely in the department's possession. The member must be allowed to view the records in the local office where the case is or was active.

(c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date the written request to review records was received by the department.

(5) (a) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

(i) the attorney general;

(ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect occurred;

(iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred; or

(iv) the office of the child and family ombudsman.

(b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

(i) the death of the child as a result of child abuse or neglect;

(ii) a sexual offense, as defined in 46-23-502, against the child;

(iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or

(iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

(c) (i) The department shall promptly disclose the results of an investigation to an individual described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the determination that:

(A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or

(B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession of a Schedule I or Schedule II drug that is prohibited by state law.

(ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have contact with drug paraphernalia as defined in 45-10-101.

(d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be released within 5 business days to the county attorney of the county in which the acts that are the subject of a report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a) and to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211.

(ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault shall report to the department as provided in this part without disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.

(iii) When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

(6) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(7) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(8) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(9) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a) and (5). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(10) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (9) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(11) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost."

Section 30. Section 41-3-301, MCA, is amended to read:

"41-3-301. (Temporary) Emergency protective service. (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must:

(a) include the reason for removal;

(b) include information regarding the option for an emergency protective services hearing within 5 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

(c) provide contact information for the child protection specialist, the child protection specialist's supervisor, and the office of state public defender; and

(d) advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person:

(i) has the right to receive a copy of the affidavit as provided in subsection (6);

(ii) has the right to attend and participate in an emergency protective services hearing, if one is requested, and the show cause hearing, including providing statements to the judge;

(iii) may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services; and

(iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.

(2) If a child protection specialist, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act or *[sections 1 through 18]*, if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the child protection specialist shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

41-3-301. (Effective July 1, 2023) Emergency protective service.

(1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must:

(a) include the reason for removal;

(b) include information regarding the emergency protective services and show cause hearings and the purpose of the hearings; and

(c) advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services.

(2) If a child protection specialist, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in 45-5-215, against an adult member of the household or that

the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-422 within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 18], if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the child protection specialist shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 31. Section 41-3-306, MCA, is amended to read:

"41-3-306. (Temporary) Emergency protective services hearing on request – exceptions. (1) (a) If requested by the parents, parent, guardian, or other person having physical or legal custody of a child removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective

services hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5 business days.

(b) The department shall provide notification of the option for the hearing as required under 41-3-301.

(c) A hearing is not required if the child is released prior to the time of the requested hearing.

(2) The hearing may be held in person, by videoconference, or, if no other means are available, by telephone.

(3) The child and the child's parents, parent, guardian, or other person having physical or legal custody of the child must be represented by counsel at the hearing.

(4) If the court determines that continued out-of-home placement is needed, the court shall:

(a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and

(b) review the availability of options for a kinship placement and make recommendations if appropriate.

(5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian, or other person having physical or legal custody of the child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.

(6) If the court determines continued removal is not appropriate, the child must be immediately returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

(7) This section does not apply:

(a) in judicial districts that are holding voluntary prehearing conferences pursuant to 41-3-307; or

(b) to cases involving an Indian child who is subject to the *federal* Indian Child Welfare Act.

(8) *The emergency protective services hearing is an emergency proceeding for the purposes of [sections 1 through 18] and is not subject to the notice requirements of [sections 1 through 18].* (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

41-3-306. (Effective July 1, 2023) Emergency protective services hearing -- exception. (1) (a) A district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to 41-3-301 to determine whether there is probable cause to continue the removal beyond 5 business days.

(b) The department shall provide notification of the hearing as required under 41-3-301.

(c) A hearing is not required if the child is released prior to the time of the required hearing.

(2) The hearing may be held in person, by videoconference, or, if no other means are available, by telephone.

(3) The child and the child's parents, parent, guardian, or other person having physical or legal custody of the child must be represented by counsel at the hearing.

(4) If the court determines that continued out-of-home placement is needed, the court shall:

(a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and

(b) review the availability of options for a kinship placement and make recommendations if appropriate.

(5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.

(6) If the court determines continued removal is not appropriate, the child must be immediately returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

(7) This section does not apply to cases involving an Indian child who is subject to the *federal Indian Child Welfare Act*.

(8) *The emergency protective services hearing is an emergency proceeding for the purposes of [sections 1 through 18] and is not subject to the notice requirements of [sections 1 through 18].*

Section 32. Section 41-3-307, MCA, is amended to read:

“41-3-307. (Temporary) Voluntary prehearing conferences – pilot project counties. (1) The parents, parent, guardian, or other person having physical or legal custody of a child who has been removed from the home pursuant to 41-3-301 may participate in a conference within 5 days of the child’s removal and before a show cause hearing held by the court if the court is participating in a pilot project testing the effectiveness of prehearing conferences.

(2) A prehearing conference may be held under this section only if it involves:

(a) the parents, parent, guardian, or other person having physical or legal custody of the child;

(b) the person’s legal counsel;

(c) the county attorney’s office; and

(d) a department social worker.

(3) To the greatest degree possible using available funding, the meetings must be conducted by an independent and trained facilitator.

(4) At a minimum, the meetings must involve discussion of:

(a) the child’s current placement and options for continued placement if the child remains out of the home;

(b) whether other options exist for an in-home safety plan or resource that may allow the child to remain in the home;

(c) parenting time schedules; and

(d) treatment services for the family.

(5) This section does not apply to cases involving an Indian child who is subject to the *federal Indian Child Welfare Act* or *[sections 1 through 18]*.

(6) This section applies to a district court participating in the prehearing conference pilot project funded by the court improvement program on May 14, 2021, and to any district court in a rural county or multicounty district that chooses to hold conferences in accordance with this section on or after that date. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)”

Section 33. Section 41-3-422, MCA, is amended to read:

“41-3-422. Abuse and neglect petitions – burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

- (iv) long-term custody, as provided in 41-3-445;
- (v) termination of the parent-child legal relationship, as provided in 41-3-607;
- (vi) appointment of a guardian pursuant to 41-3-444;
- (vii) a determination that preservation or reunification services need not be provided; or
- (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 3], the standards of proof required for legal relief under the federal Indian Child Welfare Act and [sections 1 through 18] apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act and [sections 1 through 18], if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require. If personal service cannot be made upon a putative father, the court may not provide for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the opinion of the court, the interests of justice require counsel to be appointed or assigned.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must state:

(a) the nature of the alleged abuse or neglect and of the relief requested;

(b) the full name, age, and address of the child and the name and address of the child's parents or the guardian or person having legal custody of the child; and

(c) the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has

complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1 through 18], if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 34. Section 41-3-423, MCA, is amended to read:

"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. (1) (a) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state.

(b) (i) For the purposes of this subsection (1), the term "reasonable efforts" means the department shall in good faith develop and implement voluntary services agreements and treatment plans that are designed to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing voluntary services agreements and treatment plans.

(ii) The term includes but is not limited to:

(A) written prevention plans;

(B) development of individual written case plans specifying state efforts to preserve or reunify families;

(C) placement in the least disruptive setting possible with priority given to family placement as provided in 41-3-439;

(D) provision of services pursuant to a case plan that is designed to address the parent's treatment and other needs precluding the parent from safely parenting, including but not limited to individual and family therapy, parent education, substance abuse treatment, and trauma-related services; and

(E) periodic review of each case to ensure timely progress toward reunification or permanent placement.

(c) In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act or [sections 1 through 18], the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying in-state and out-of-state placements, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

Section 35. Section 41-3-425, MCA, is amended to read:

"41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsections (3) through (5), the court shall immediately appoint the office of state public defender to assign counsel for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act or *[sections 1 through 18]*.

(3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

(5) Except as provided in the federal Indian Child Welfare Act or *[sections 1 through 18]*, a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:

(a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

(b) the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel."

Section 36. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services – order – service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and must be supported by an affidavit signed by a representative of the department stating in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 18], clear and convincing evidence that a child is abused or neglected or is in danger of being abused or neglected. The affidavit of the department representative must contain information, if any, regarding statements made by the parents about the facts of the case.

(c) If from the alleged facts presented in the affidavit it appears to the court that there is probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 18], clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 18], clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected, the court shall dismiss the petition.

(d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of the petition and affidavit.

(e) The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person having physical or legal custody of the child may have a support person present during any in-person meeting with a child protection specialist concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the child protection specialist.

(2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 18], clear and convincing evidence based on the petition and affidavit, the court may issue an order for immediate protection of the child. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 18], clear and convincing evidence, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) the right of the department to locate, contact, and share information with any extended family members who may be considered as placement options for the child;

(d) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(f) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(g) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(h) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422 *or, if the case involves an Indian child, as provided in [section 7].*

Section 37. Section 41-3-432, MCA, is amended to read:

“41-3-432. Show cause hearing – order. (1) (a) Except as provided in the federal Indian Child Welfare Act *or [sections 1 through 18]*, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act *or [sections 1 through 18]*, a qualified expert witness is required to testify that the continued custody of the *Indian* child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the *Indian* child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act *or [sections 1 through 18]*, if applicable.

(3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1 through 18], if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act or [section 7], if applicable, have been met.

(5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 18], if applicable, the court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 38. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication – temporary disposition – findings – order.

(1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434

and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act or *[sections 1 through 18]*, if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person;

(ii) the continuity of care the person has offered the child by providing permanency or stability in residence, schooling, and activities outside of the home; and

(iii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;
(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents.

(8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 18], a qualified expert witness is required to testify that the continued custody of the *Indian* child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the *Indian* child."

Section 39. Section 41-3-444, MCA, is amended to read:

"41-3-444. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-438, 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (9);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(f) it is in the best interests of the child to remain or be placed with the potential guardian;

(g) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the *federal Indian Child Welfare Act*, 25 U.S.C. 1901, et seq., or [section 3], the *Indian* child's tribe has received notification from the state of the initiation of the proceedings.

(3) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint in the same manner provided for in 41-3-438(4).

(4) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except for the department's provision of a financial subsidy, if any, pursuant to subsection (9).

(5) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

(6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

(7) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(8) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-438.

(9) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

(10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

Section 40. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act or [sections 1 through 18], if applicable, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent within a reasonable time;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred.

(5) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 18], a qualified expert witness is required to testify that the continued custody of the *Indian* child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the *Indian* child."

Section 41. Section 42-2-102, MCA, is amended to read:

"42-2-102. Proceedings subject to Indian Child Welfare Act Acts. A proceeding under this title that pertains to an Indian child, as defined in the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., [section 3], is subject to that act the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., and [sections 1 through 18]."

Section 42. Section 42-2-604, MCA, is amended to read:

"42-2-604. Contents of petition for termination of parental rights.

(1) The petition for termination of parental rights must state:

(a) the identity of the petitioner;

(b) the date and location of the birth of the child;

(c) the date of the relinquishment by the birth mother or relinquishing parent;

(d) the current location of the child;

(e) the names and locations, if known, of any putative or presumed father of the child;

(f) whether a parent is one from whom consent is not required;

(g) whether court orders from any other proceeding have been issued terminating parental rights to the child that is the subject of the petition;

(h) any other evidence supporting termination of the legal rights that a person has with regard to the child; and

(i) a request for temporary custody of the child prior to the adoption.

(2) The petitioner shall file with the petition for termination of parental rights the following documents received in support of the petition:

(a) any relinquishments and consents to adoption;

(b) any denials of paternity;

(c) any acknowledgments of paternity and denial of parental rights;

(d) any affidavits from the putative father registry that have been executed by the department;

(e) the adoptive decision support services report required under 42-2-409;

(f) proof of prior service of any notice or acknowledgment of service or waiver of service received; and

(g) proof of compliance with the *federal* Indian Child Welfare Act of 1978, [sections 1 through 18], and Interstate Compact on the Placement of Children, if applicable.”

Section 43. Section 42-4-102, MCA, is amended to read:

“42-4-102. Duties of placing parent. (1) A parent who is directly placing a child for adoption shall execute a voluntary relinquishment and consent to adopt, including:

(a) receiving the adoptive decision support services required by 42-2-409; and

(b) if the parent is a minor, being advised by legal counsel other than the attorney representing the prospective adoptive parent.

(2) A placing parent shall identify and provide information on the location of any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including:

(a) any current spouse;

(b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child; and

(c) any adoptive parent.

(3) A placing parent shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the *federal* Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 18].

(4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

(a) the disclosures of medical and social history required pursuant to 42-3-101;

(b) a certified copy of the child’s birth certificate or other document certifying the place and date of the child’s birth; and

(c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

(5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice of parental placement.

(6) A parent placing a child for adoption in a direct parental placement adoption shall file a disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent or any person acting on behalf of the prospective adoptive parent.

(7) Subject to the limitations set in 42-7-102, expenses for adoptive decision support services, postadoptive counseling, outpatient mental health services, legal fees, and the reasonable costs of preparing reports documenting the required disclosures of medical and social history and the disclosures documenting disbursements are allowable expenses that can be paid for by the prospective adoptive parent.”

Section 44. Section 42-4-103, MCA, is amended to read:

“42-4-103. Direct parental placement – information to be filed.

(1) A parent who proposes to place a child for adoption with a prospective adoptive parent who resides in Montana and who is not the child’s stepparent or an extended family member shall file with the court of the county in which the prospective adoptive parent or the parent making the placement resides the following:

- (a) a notice of parental placement containing the following information:
 - (i) the name and address of the placing parent;
 - (ii) the name and address of each prospective adoptive parent;
 - (iii) the name and address or expected date and place of birth of the child;
 - (iv) the identity and information on the location of any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including any current spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child, and any adoptive parent;

- (v) all relevant information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the *federal* Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 18]; and

- (vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

- (b) a relinquishment and consent to adoption of the child by the adoptive parent;

- (c) the adoptive decision support services report required by 42-2-409;

- (d) the medical and social history disclosures required by 42-3-101;

- (e) a report of disbursements identifying all payments made to or to the benefit of the placing parent by the prospective adoptive parent or anyone acting on the parent’s behalf that contains a statement by each person furnishing information in the report attesting to the truthfulness of the information furnished by that person;

- (f) a certified copy of the child’s birth certificate or other document certifying the place and date of the child’s birth;

- (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and

- (h) the preplacement evaluation.

- (2) The notice of parental placement must be signed by the parent making the placement.”

Section 45. Section 42-4-203, MCA, is amended to read:

“42-4-203. Duties of placing parent. (1) A parent who is placing a child for adoption shall comply with the provisions for executing a voluntary relinquishment and consent to adopt.

(2) A parent placing a child for adoption shall identify and provide information on the location of:

- (a) any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including any current spouse; and

- (b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child.

(3) A parent placing a child for adoption shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the *federal* Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 18].

(4) A parent placing a child for adoption shall provide:

(a) the disclosures of medical and social history;

(b) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth; and

(c) a certified copy of any existing court orders pertaining to custody or visitation of the child."

Section 46. Section 42-4-209, MCA, is amended to read:

"42-4-209. Postplacement department or agency evaluation. (1) The department or agency shall complete a written postplacement evaluation. The postplacement evaluation must be conducted according to the department's or agency's standards for placement of a child and at a minimum must include a personal interview with the prospective adoptive parent in that person's home and observation of the relationship between the child and the prospective adoptive parent.

(2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department or agency shall file the postplacement evaluation.

(3) The evaluation must include the following information:

(a) whether the child is legally free for adoption;

(b) whether the proposed home is suitable for the child;

(c) a statement that the medical and social histories of the birth parents and child have been provided to the prospective adoptive parent;

(d) an assessment of adaptation by the prospective adoptive parent to parenting the child;

(e) a statement that the 6-month postplacement evaluation period has been complied with or should be waived;

(f) any other circumstances and conditions that may have a bearing on the adoption and of which the court should have knowledge;

(g) whether the agency waives notice of the proceeding;

(h) a statement that any applicable provision of law governing an interstate or intercountry placement of the child has been complied with; and

(i) a statement of compliance with any applicable provisions of the *federal* Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 18].

(4) The evaluation must contain a definite recommendation stating the reasons for or against the proposed adoption."

Section 47. Section 42-5-101, MCA, is amended to read:

"42-5-101. Petition for adoption. (1) A petition for adoption must be verified and must specify:

(a) the full names, ages, and place and duration of residence of the petitioners;

(b) the current marital status of petitioners and, if married, the place and date of the marriage;

(c) the circumstances under which the petitioners obtained physical custody of the child and the name of the individual or agency that placed the child;

(d) the date and place of birth of the child, if known;

(e) the name used for the child in the proceeding and, if a change in name is desired, the full name by which the child is to be known;

(f) that it is the desire of the petitioners that the relationship of parent and child be established between the petitioners and the child and to have all the rights and be subject to all the duties of that relationship;

(g) a full description and statement of value of all property owned or possessed by the child;

(h) the facts, if any, that excuse consent on the part of a person whose consent is required for the adoption;

(i) that any applicable law governing interstate or intercountry placement was complied with;

(j) that, if applicable, the *federal* Indian Child Welfare Act, 25 U.S.C. 1901, et seq., ~~was and [sections 1 through 18] were~~ complied with;

(k) whether a previous petition has been filed by the petitioners to adopt the child at issue or any other child in any court and the disposition of the petitions; and

(l) the name and address, if known, of any person who is entitled to receive notice of the petition for adoption.

(2) There must be attached to or accompanying the petition:

(a) any written consent required by 42-2-301;

(b) a certified copy of any court order terminating the rights of the child's parents;

(c) a certified copy of any existing court order in any pending proceeding concerning custody of or visitation with the child;

(d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child with a special need;

(e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;

(f) a disclosure of any disbursements made in connection with the adoption proceeding.

(3) One copy of the petition must be retained by the court. A copy must be sent to:

(a) the department or to the agency participating in the adoption proceeding;

(b) the parent placing the child for adoption in a direct parental placement adoption; or

(c) the child's guardian ad litem if the child has one.

(4) Proceedings initiated under this part are subject to the Montana Rules of Civil Procedure except as modified by this part."

Section 48. Section 42-5-107, MCA, is amended to read:

"42-5-107. Best interests of child. (1) In determining whether to grant a petition to adopt, the court shall consider all relevant factors in determining the best interests of the child. The court shall consider factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability.

(2) In a contested adoption proceeding involving a child, the court shall consider the factors set out in subsection (1) and shall also consider:

(a) the nature and length of any relationship already established between a child and any person seeking to adopt the child;

(b) the nature of any family relationship between the child and any person seeking to adopt the child and whether that person has established a positive emotional relationship with the child;

(c) the harm that could result to the child from a change in placement;

(d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

(e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or the department or agency whose consent to the adoption is required.

(3) In an Indian child placement, the court shall determine if the requirements of the *federal* Indian Child Welfare Act, 25 U.S.C. 1901, et seq., *and [sections 1 through 18] have been met.*"

Section 49. Section 47-1-104, MCA, is amended to read:

“47-1-104. Statewide system – structure and scope of services – assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the director.

(2) The director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act *and [section 9]*, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 50. Section 52-2-117, MCA, is amended to read:

"52-2-117. Indian child welfare specialist. (1) The director of the department shall appoint a qualified person to act as an Indian child welfare specialist.

(2) The duties of the specialist include:

(a) developing Indian foster homes and other Indian placement resources;

(b) providing technical advice to tribal, state, and county agencies and district courts on matters pertaining to Indian child welfare;

(c) providing assistance in negotiating cooperative agreements to provide foster care services to Indian children;

(d) conducting training seminars on implementing the *federal* Indian Child Welfare Act of 1978, (25 U.S.C. 1901, et seq.,) and [sections 1 through 18];

(e) applying for and accepting grants and other funds for Indian child welfare activities;

(f) developing and maintaining a list of attorneys to represent indigent parents and Indian custodians in Indian child welfare proceedings;

(g) making recommendations to the department on legislation and rules concerning Indian child welfare matters; and

(h) performing other duties concerning Indian child welfare matters as determined by the director."

Section 51. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

Section 52. Codification instruction. [Sections 1 through 18] are intended to be codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 1 through 18].

Section 53. Coordination instruction. If both House Bill No. 111 and [this act] are passed and approved and if both contain a section that amends 47-1-104, then the sections amending 47-1-104 are void and 47-1-104 must be amended as follows:

“47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the director.

(2) The director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

~~(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;~~

~~(iv)(iii) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;~~

~~(v)(iv) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;~~

~~(vi)(v) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;~~

~~(vii)(vi) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112; and~~

~~(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;~~

~~(iv) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and~~

~~(x)(vii) for a witness in a criminal grand jury proceeding, as provided in 46-4-304;~~

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(ix) *for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant to 41-3-422 and as required under the federal Indian Child Welfare Act and [section 9], as provided in 41-3-425;*

(x) *for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116; and*

(xi) *for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and*

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 54. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2023.

(2) [Section 31] and this section are effective on passage and approval.

Section 55. Termination. [This act] terminates June 30, 2025.

Approved May 22, 2023

CHAPTER NO. 717

[HB 321]

AN ACT GENERALLY REVISING LAWS RELATED TO THE COAL TAX TRUST; ESTABLISHING A CONSERVATION DISTRICT FUND AND A COAL BOARD FUND WITHIN THE COAL TAX TRUST; ALLOCATING COAL SEVERANCE TAX FUNDS TO THE CONSERVATION DISTRICT FUND AND THE COAL BOARD FUND; REVISING THE ALLOCATION OF COAL SEVERANCE TAXES; PROVIDING FOR TRANSFERS; TRANSFERRING MONEY FROM THE GENERAL FUND TO THE SCHOOL FACILITY FUND; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 17-5-703 AND 90-6-1001, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-703, MCA, is amended to read:

1 HOUSE BILL NO. 317

2 INTRODUCED BY J. WINDY BOY, M. WEATHERWAX, C. KEOGH, D. HAWK, E. KERR-CARPENTER, A.
3 BUCKLEY, K. SULLIVAN, K. KORTUM, T. FRANCE, E. STAFMAN, M. CAFERRO, M. THANE, F. SMITH, M.
4 FOX, S. MORIGEAU, J. ETCHART, K. ABBOTT, P. TUSS, S. STEWART PEREGOY, B. CARTER, Z.
5 ZEPHYR, M. ROMANO, L. SMITH, D. BAUM, E. MATTHEWS, S. HOWELL
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA INDIAN CHILD WELFARE ACT;
8 PROVIDING REQUIREMENTS FOR DETERMINING INDIAN STATUS AND INDIAN TRIBE; ESTABLISHING
9 REQUIREMENTS FOR COURT PROCEEDINGS, EVIDENCE, AND CONSENT; PROVIDING DEFINITIONS;
10 AMENDING SECTIONS 40-6-405, 40-6-407, 40-6-413, 40-6-414, 40-6-1001, 40-7-135, 41-3-102, 41-3-103,
11 41-3-109, 41-3-128, 41-3-205, 41-3-301, 41-3-306, 41-3-307, 41-3-422, 41-3-423, 41-3-425, 41-3-427, 41-3-
12 432, 41-3-437, 41-3-444, 41-3-609, 42-2-102, 42-2-604, 42-4-102, 42-4-103, 42-4-203, 42-4-209, 42-5-101, 42-
13 5-107, 47-1-104, AND 52-2-117, MCA; AND PROVIDING EFFECTIVE DATES."
14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16

17 NEW SECTION. **Section 1. Short title.** [Sections 1 through 20] may be cited as the "Montana Indian
18 Child Welfare Act".
19

20 NEW SECTION. **Section 2. Legislative findings -- purpose.** (1) The legislature recognizes that in
21 possibly no other area of concurrent tribal and state law is it more important that tribal sovereignty be respected
22 than in an area as socially and culturally determinative as family relationships. The legislature finds that the
23 state is committed to protecting the essential tribal relations and best interests of Indian children by promoting
24 practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the
25 parents, the health, safety, or welfare of the child, or the interests of the child's tribe. Whenever out-of-home
26 placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian Child
27 Welfare Act and [sections 1 through 20], the best interests of the Indian child may be served by placing the
28 Indian child in accordance with the placement priorities expressed in [sections 1 through 20].

(2) The legislature further finds that when placement away from the parent or Indian custodian is necessary for the Indian child's safety, the state is committed to a placement that reflects and honors the unique values of the Indian child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.

(3) It is the intent of the legislature that [sections 1 through 20] serve as a means of clarifying existing laws and codifying existing policies and practices.

(4) The legislature further intends that nothing in [sections 1 through 20] interfere with policies and procedures that are derived from agreements entered into between the department and a tribe or tribes, as authorized by 25 U.S.C. 1919. The legislature finds that [sections 1 through 20] specify the minimum requirements that must be applied in a child custody proceeding and do not prevent the department from providing a higher standard of protection to the rights of an Indian child, parent, Indian custodian, or Indian child's tribe.

(5) It is also the legislature's intent that any department policy manual covering Indian child welfare and any relevant local agreements between individual federally recognized tribes and the department should serve as persuasive guides in the interpretation and implementation of the federal Indian Child Welfare Act, [sections 1 through 20], and other relevant state laws.

NEW SECTION. Section 3. Applicability. [Sections 1 through 20] apply in all child custody proceedings. Whenever a child custody proceeding involves an Indian child and a conflict exists between [sections 1 through 20] and Title 40, chapter 6, Title 41, chapter 3 or 4, or Title 42, the provisions of [sections 1 through 20] apply.

NEW SECTION. Section 4. Definitions. As used in [sections 1 through 20], the following definitions apply:

(1) "Active efforts" means affirmative, active, thorough, and timely efforts meeting the requirements of [section 14] that are intended primarily to maintain or reunite an Indian child with the child's family and that are tailored to the facts and circumstances of the case.

(2) "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(3) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian Child Welfare Act, [sections 1 through 20], and other applicable law that are designed to:

(a) protect the safety, well-being, development, and stability of the Indian child;

(b) prevent the unnecessary out-of-home placement of the Indian child;

(c) acknowledge the right of Indian tribes to maintain their existence and integrity in order to promote the stability and security of their children and families; and

(d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.

(4) (a) "Child custody proceeding" means any state or private proceeding, other than an emergency proceeding, that may culminate in a foster care placement, termination of parental rights, preadoptive placement, or adoptive placement.

(b) The term does not include a placement based on:

(i) an act that, if committed by an adult, would be considered a crime; or

(ii) an award, in a dissolution proceeding, of custody to one of the child's parents.

(5) "Court of competent jurisdiction" means a court that has jurisdiction over the relevant subject matter under federal, state, or tribal law.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Foster care placement" means an action removing an Indian child from the child's parent or Indian custodian for temporary placement in a foster home or institution or with a relative, guardian, conservator, or suitable other person under which the parent or Indian custodian may not have the child returned on demand but parental rights have not been terminated.

(8) "Indian" means a person who is a member of an Indian tribe or who is an Alaska Native and a member of a regional corporation as established in 43 U.S.C. 1606.

(9) "Indian child" means an unmarried Indian person who is under 18 years of age and who is:

(a) a member of an Indian tribe; or

1 (b) eligible for membership in an Indian tribe.

2 (10) (a) "Indian child's family" or "extended family member" means an individual defined by the law
3 or custom of the Indian child's tribe as a relative of the Indian child.

4 (b) If the Indian child's tribe does not identify family members by law or custom, the term means an
5 adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
6 nephew, cousin, stepparent, or stepgrandparent. A stepparent or stepgrandparent may be considered a family
7 member even following termination of the marriage.

8 (11) "Indian child's tribe" means a tribe or tribes in which an Indian child is a member or is
9 determined eligible for membership as provided in [section 6].

10 (12) "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law has
11 legal or temporary physical custody of an Indian child or to whom the parent has transferred temporary care,
12 physical custody, and control of the Indian child.

13 (13) (a) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or
14 community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior
15 because of their status as Indians.

16 (b) The term includes an Alaska Native village as defined in 43 U.S.C. 1602.

17 (14) "Member" or "membership" means a determination by an Indian tribe that an individual is a
18 member of or eligible for membership in that Indian tribe.

19 (15) (a) "Parent" means a biological parent of an Indian child or an individual who has lawfully
20 adopted an Indian child, including adoptions made as tribal customary adoptions.

21 (b) The term does not include an unwed father whose paternity has not been acknowledged or
22 established under Title 40, chapter 6, part 1, or the applicable laws of another state.

23 (16) "Preadoptive placement" means the temporary placement of an Indian child in a foster home or
24 institution after the termination of parental rights but before or in lieu of adoptive placement.

25 (17) "Qualified expert witness" means a person who meets the provisions of [section 13].

26 (18) "Termination of parental rights" means any action resulting in the termination of the parent-child
27 relationship.

28 (19) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child

1 custody proceedings. The term includes but is not limited to a federal court of Indian offenses, a court
2 established and operated under the code or custom of an Indian tribe, and an administrative body of an Indian
3 tribe vested with authority over child custody proceedings.

4 (20) (a) "Tribal customary adoption" means adoption or another process through the tribal custom,
5 traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and
6 through which the nonparent is vested with the rights, privileges, and obligations of a legal parent.

7 (b) Termination of the parent-child relationship between the Indian child and the biological parent
8 is not required to recognize a tribal customary adoption.

9

10 **NEW SECTION. Section 5. Determination of Indian status -- confidentiality of records.** (1) (a) A
11 party seeking the foster care placement of, termination of parental rights over, or adoption of a child shall use
12 due diligence to determine whether the child is an Indian child. The inquiry must be made in consultation with:

13 (i) the child's parent or parents;
14 (ii) an individual who has custody of the child or with whom the child resides;
15 (iii) any other individual who reasonably may be expected to have information regarding the child's
16 possible membership or eligibility for membership in an Indian tribe; and

17 (iv) any Indian tribe of which the child may be a member or may be eligible for membership. The
18 consultation with a tribe must be made by contacting the tribe in writing.

19 (b) The inquiries required under this subsection (1) must be documented in the record.

20 (2) Preliminary contacts for the purpose of using due diligence to determine a child's possible
21 Indian status do not constitute legal notice as required by [section 8].

22 (3) A court shall ask each participant in an emergency proceeding or voluntary or involuntary child
23 custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The
24 inquiry must be made at the commencement of the proceeding and all responses must be on the record. The
25 court shall instruct the parties to inform the court if they subsequently receive information that provides reason
26 to know the child is an Indian child.

27 (4) If there is reason to know the child is an Indian child but the court does not have sufficient
28 evidence to determine that the child is or is not an Indian child, the court shall:

1 (a) confirm, by way of a report, declaration, or testimony included in the record, that the
2 department or other party used due diligence to identify and work with all tribes of which there is reason to
3 know the child may be a member or eligible for membership to verify whether the child is a member or eligible
4 for membership; and

5 (b) treat the child as an Indian child, unless and until it is determined on the record that the child
6 does not meet the definition of an Indian child.

7 (5) A court, on conducting the inquiry required in subsection (3), has reason to know that a child
8 involved in an emergency proceeding or child custody proceeding may be an Indian child if:

9 (a) any participant in the proceeding, officer of the court involved in the proceeding, Indian tribe,
10 Indian organization, or agency informs the court that:

11 (i) the child is an Indian child; or

12 (ii) it has discovered information indicating that the child is an Indian child;

13 (b) the child who is the subject of the proceeding gives the court reason to know the child is an
14 Indian child;

15 (c) the court is informed that the residence or domicile of the child, the child's parent, or the child's
16 Indian custodian is on a reservation or in an Alaska Native village;

17 (d) the court is informed that the child is or has been a ward of a tribal court;

18 (e) the court is informed that either of the parents or the child possesses an identification card
19 indicating membership in an Indian tribe; or

20 (f) the court determines from additional information provided that the child may be an Indian child.

21 (6) (a) When seeking verification of a child's Indian status during a voluntary proceeding, the court
22 shall keep relevant documents pertaining to the inquiry confidential and under seal if a consenting parent
23 expresses either orally or in writing a desire for anonymity. A request for anonymity does not relieve the court,
24 agency, or other party from any duty of compliance with [sections 1 through 20], including the obligation to
25 verify whether the child is an Indian child.

26 (b) A tribe receiving information related to an inquiry of a child's status as an Indian child must
27 keep documents and information confidential.

28 (7) (a) A written determination by an Indian tribe regarding the child's status as an Indian child is

1 conclusive that the child is an Indian child.

2 (b) If a tribe provides no response to the department's written request for verification of the child's
3 membership status, the nonresponse does not constitute evidence that the child is not a member of or eligible
4 for membership in the tribe.

5 (8) If a child has been determined not to be an Indian child, any party to the proceeding or an
6 Indian tribe that subsequently determines the child is a member or is eligible for membership may move, during
7 the pendency of a child custody proceeding to which the federal Indian Child Welfare Act or [sections 1 through
8 20] applies, for redetermination of the child's Indian status based on:

9 (a) new evidence;

10 (b) a redetermination by the child's tribe;

11 (c) newly conferred federal recognition of the tribe; or

12 (d) a prior mistaken determination on the part of the tribe.

13
14 **NEW SECTION. Section 6. Determination of Indian tribe.** (1) If the Indian child is a member of or
15 eligible for membership in only one tribe, that tribe must be designated as the Indian child's tribe.

16 (2) If the Indian child meets the definition of Indian child through more than one tribe, deference
17 must be given to the tribe in which the Indian child is already a member, unless otherwise agreed to by the
18 tribes.

19 (3) (a) If the Indian child meets the definition of Indian child through more than one tribe because
20 the child is a member in more than one tribe or the child is not a member of but is eligible for membership in
21 more than one tribe, the court shall provide the opportunity in any involuntary child custody proceeding for the
22 tribes to determine which tribe should be designated as the Indian child's tribe.

23 (b) If the tribes are able to reach an agreement, the court shall designate the agreed-on tribe as
24 the Indian child's tribe.

25 (c) If the tribes are unable to reach an agreement, for the purposes of [sections 1 through 20] the
26 court shall designate as the child's tribe the tribe with which the child has the more significant contacts as the
27 Indian child's tribe. In making the designation, the court shall consider:

28 (i) the preference of the parents for membership of the child;

- 1 (ii) the length of the child's past residence or domicile on or near the reservation of each tribe;
2 (iii) the tribal membership of the child's custodial parent or Indian custodian;
3 (iv) the interest asserted by each tribe in the child custody proceeding;
4 (v) whether there has been a previous adjudication with respect to the child by a court of one of
5 the tribes; and
6 (vi) self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-
7 identify with a tribe.

8 (4) A determination of the Indian child's tribe for the purposes of [sections 1 through 20] does not
9 constitute a determination for any other purpose.

10
11 NEW SECTION. Section 7. Jurisdiction -- transfer of jurisdiction. (1) An Indian tribe has exclusive
12 jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the
13 reservation of that tribe unless:

- 14 (a) the tribe has consented to the state's concurrent jurisdiction;
15 (b) the tribe has expressly declined to exercise its exclusive jurisdiction; or
16 (c) the state is exercising emergency jurisdiction in compliance with [section 16].

17 (2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding,
18 the Indian tribe may retain exclusive jurisdiction regardless of the residence or domicile of the child.

19 (3) Except as provided in subsections (4) and (6), in a child custody proceeding involving an Indian
20 child who is not residing or domiciled within the reservation of the Indian child's tribe, the court shall, in the
21 absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe on
22 the motion of any of the following:

- 23 (a) either of the Indian child's parents;
24 (b) the Indian child's Indian custodian;
25 (c) the Indian child's tribe; or
26 (d) the Indian child if the child is 12 years of age or older.

27 (4) A tribe to which jurisdiction is being transferred shall respond within 75 days to a motion or
28 order transferring jurisdiction to the tribal court. A failure of the tribe to respond within 75 days must be

1 construed as a declination to accept the transfer of the case.

2 (5) If the Indian child's tribe has not formally intervened, the moving party shall serve a copy of the
3 motion and all supporting documents on the tribal court to which the moving party seeks transfer.

4 (6) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's
5 tribe, the court may not transfer the proceeding.

6 (7) (a) If a state court believes or any party asserts that good cause to deny transfer exists, the
7 reasons for that belief or assertion must be provided orally or in writing on the record and to the parties to the
8 child custody proceeding. Any party to the child custody proceeding must have the opportunity to provide the
9 court with the reasons that good cause exists to deny transfer of the proceeding.

10 (b) In determining whether good cause exists, the court may not consider:

11 (i) whether the child custody proceeding is at an advanced stage;

12 (ii) whether there have been prior proceedings involving the child for which no petition to transfer
13 was filed;

14 (iii) whether transfer could affect the placement of the child;

15 (iv) the child's cultural connections with the tribe or its reservation; or

16 (v) socioeconomic conditions or any negative perception of the tribal or bureau of Indian affairs
17 social services or judicial systems.

18 (c) If the court denies transfer of jurisdiction, the court shall state its reasons for the denial orally on
19 the record or in a written order.

20 (8) (a) Following entry of an order transferring jurisdiction to the Indian child's tribe and pending
21 receipt of a tribal court order accepting jurisdiction, the state court:

22 (i) may conduct additional hearings and enter orders that are in the best interests of the child and
23 strictly comply with the requirements of the federal Indian Child Welfare Act and [sections 1 through 20]; and

24 (ii) may not enter a final order in a child custody proceeding, except an order dismissing the
25 proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the
26 child was removed.

27 (b) On receipt of an order from a tribal court accepting jurisdiction, the court shall:

28 (i) dismiss the child custody proceeding with prejudice; and

(ii) expeditiously provide the tribal court with all records related to the proceeding, including but not limited to the pleadings and any court record. The state court shall work with the tribal court to ensure the transfer of the custody of the Indian child and the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

(9) If the Indian child's tribe accepts jurisdiction, the state court shall enter an order relieving the office of the state public defender and any public defender assigned pursuant to 41-3-425 and 47-1-104 from further representation.

(10) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody proceeding in compliance with the federal Indian Child Welfare Act, [sections 1 through 20], and any applicable state-tribal agreement.

NEW SECTION. Section 8. Notice. (1) The petitioning party shall provide notice of the initial petition filed in an involuntary child custody proceeding and a petition seeking termination of parental rights when the petitioning party knows or has reason to know that the child is or may be an Indian child. Notice must be provided as required in subsection (2) to:

(a) the Indian child's parent or Indian custodian; and

(b) the child's tribe or tribes.

(2) (a) Notice to the tribe must be made by certified mail, return receipt requested, and must meet the requirements of subsection (4). The notice must be sent to the person designated in the most current Federal Register as the designated tribal agent for service of notice for the purposes of the federal Indian Child Welfare Act. The petitioning party shall file the return receipt with the court as proof of notice.

(b) Notice to the parent or Indian custodian must be made by personal service, or alternative means as provided in 41-3-422 if personal service cannot be accomplished, and must meet the requirements of subsection (4).

(c) If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice must be given to the secretary of the U.S. department of the interior by certified mail, return receipt requested, in accordance with the provisions of 25 CFR, part 23.

(d) Service of all other petitions, other than the initial petition and a petition for termination of

1 parental rights, must be served on the tribe by first-class mail unless otherwise directed by the tribe's
2 designated agent for notice.

3 (e) When notice of the initial petition and a petition for termination of parental rights to the parent or
4 Indian custodian is required under this subsection (2), personal service, and alternative means of personal
5 service when personal service cannot be accomplished, as provided in 41-3-422, takes the place of certified
6 mail with return receipt requested.

7 (3) A foster care placement or a termination of parental rights proceeding may not be held until at
8 least 10 days after receipt of the notice by the parent or Indian custodian, the tribe, and, if applicable, the
9 secretary. The parent, Indian custodian, or tribe shall, on request, be granted up to 20 additional days to
10 prepare for the proceeding. The 10-day notice requirement does not limit a court's ability to hold an emergency
11 protective services hearing pursuant to 41-3-306.

12 (4) Notice provided under this section must be in clear and understandable language and include
13 the following:

14 (a) the child's name, date of birth, and place of birth;

15 (b) all known names of the child's parents, including maiden, married, and former names or
16 aliases;

17 (c) the parents' dates of birth, places of birth, and tribal enrollment numbers, if known;

18 (d) the names, dates of birth, places of birth, and tribal enrollment information of other direct lineal
19 ancestors of the child, if known;

20 (e) the name of each Indian tribe in which the child is a member or may be eligible for membership
21 if a biological parent is a member; and

22 (f) a copy of the petition, complaint, or other document by which the child custody proceeding was
23 initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing.

24

25 **NEW SECTION. Section 9. Tribal participation in proceedings -- intervention.** (1) A state court
26 shall allow a designated tribal representative to represent a tribe in all proceedings under [sections 1 through
27 20], in person or by electronic means. The court may not require that the tribal representative be an attorney or
28 that the person be licensed in Montana if the person is an attorney.

(2) An attorney may appear in a proceeding involving an Indian child under [sections 1 through 20] without complying with any rule of the Montana supreme court regarding admission to practice in the state or paying the associated fees or assessments related to admission to practice if the attorney is:

(a) permitted to practice in another state, tribe, or territory of the United States or District of Columbia; and

(b) in good standing with the bar association of that state, tribe, or territory.

(3) The Indian child's tribe or tribes may file as an intervenor at any point in a child custody proceeding involving the Indian child.

NEW SECTION. Section 10. Full faith and credit. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe that are applicable to Indian child custody proceedings.

NEW SECTION. Section 11. Right to counsel. In a child custody proceeding under [sections 1 through 20] in which the court determines that the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian has the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child pursuant to 41-3-425.

NEW SECTION. Section 12. Right of access to evidence. Each party to a child custody proceeding involving an Indian child has the right to examine all reports or other documents filed with the court on which any decision with respect to the proceeding may be based.

NEW SECTION. Section 13. Qualified expert witness -- requirements -- prohibitions. (1) A qualified expert witness is an individual who provides testimony in a child custody proceeding under [sections 1 through 20]. The purpose of the testimony is to assist a court in determining whether the continued custody of the child by or the return of the child to the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The parties may not waive the requirement for qualified expert witness testimony.

(2) The petitioning party shall consult with the Indian child's tribe on the selection of the qualified

1 expert witness, including asking whether the tribe has a list of preferred qualified expert witnesses. To the
2 extent possible, the petitioning party shall use an individual preferred by the tribe.

3 (3) A qualified expert witness must be qualified to testify regarding whether the child's continued
4 custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child
5 and must be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe.

6 (4) (a) If the petitioner is the department, the child protection specialist assigned to the case and
7 the child protection specialist's supervisor may not testify as qualified expert witnesses in the case.

8 (b) Nothing in this subsection (4) may be construed as barring:

9 (i) the child protection specialist or the child protection specialist's supervisor from testifying as an
10 expert witness for other purposes in a proceeding under [sections 1 through 20]; or

11 (ii) the petitioner or another party in a proceeding under [sections 1 through 20] from providing
12 additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court,
13 including the determination of whether the continued custody of the Indian child by or return of the Indian child
14 to the parent, parents, or Indian custodian is likely to result in serious emotional or physical damage to the
15 Indian child.

16
17 **NEW SECTION. Section 14. Active efforts.** (1) Any party seeking to effect a foster care placement
18 of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts
19 have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of
20 the Indian family and that the efforts have proven unsuccessful.

21 (2) The court shall make written findings that the petitioning party has provided active efforts and
22 the efforts must be documented in detail in the record.

23 (3) If the department is involved in the child custody proceeding, active efforts must include
24 assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or
25 developing the resources necessary to satisfy the case plan.

26 (4) (a) To the maximum extent possible, active efforts must be provided in a manner consistent
27 with the prevailing social and cultural conditions and way of life of the Indian child's tribe and conducted in
28 partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians,

1 and tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include but are
2 not limited to:

3 (i) conducting a comprehensive assessment of the circumstances of the Indian child's family, with
4 a focus on safe reunification as the most desirable goal;

5 (ii) identifying appropriate services and helping the parents to overcome barriers, including actively
6 assisting the parents in obtaining the services;

7 (iii) identifying, notifying, and inviting representatives of the Indian child's tribe to participate in
8 providing support and services to the Indian child's family and in family team meetings, permanency planning,
9 and resolution of placement issues;

10 (iv) conducting or causing to be conducted a diligent search for the Indian child's extended family
11 members and contacting and consulting with extended family members to provide family structure and support
12 for the Indian child and the Indian child's parents;

13 (v) offering and employing all available and culturally appropriate family preservation strategies
14 and facilitating the use of remedial and rehabilitative services provided by the child's tribe;

15 (vi) taking steps to keep siblings together whenever possible;

16 (vii) supporting regular visits with parents or Indian custodians in the most natural setting possible
17 as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure
18 the health, safety, and welfare of the child;

19 (viii) identifying community resources, including housing, financial, transportation, mental health,
20 substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the
21 child's family, in accessing and using the resources;

22 (ix) monitoring progress and participation in services;

23 (x) considering alternative ways to address the needs of the Indian child's parents and, when
24 appropriate, the family, if the optimum services do not exist or are not available; and

25 (xi) providing postreunification services and monitoring.

26 (b) Referral to a service or program does not constitute an active effort if the referral was the sole
27 action taken.

28

1 **NEW SECTION. Section 15. Evidentiary requirements.** (1) A court may not order a foster care
2 placement of an Indian child unless:

3 (a) the petitioning party has provided clear and convincing evidence that active efforts were made
4 to provide remedial services and rehabilitative programs to prevent the breakup of an Indian family and that the
5 efforts were unsuccessful; and

6 (b) clear and convincing evidence is presented, including the testimony of one or more qualified
7 expert witnesses, to demonstrate that continued custody by the child's parent or Indian custodian is likely to
8 result in serious emotional or physical damage to the child.

9 (2) The court may not terminate parental rights of the parents of an Indian child unless evidence
10 beyond a reasonable doubt is presented that:

11 (a) active efforts were made to prevent the breakup of the Indian family and the efforts were
12 unsuccessful; and

13 (b) continued custody of the child by the child's parent or Indian custodian is likely to result in
14 serious emotional or physical damage to the child. The evidence must include testimony of one or more
15 qualified expert witnesses.

16 (3) For the purposes of this section, any harm that may result from interfering with the bond or
17 attachment that may have formed between the child and a foster care provider may not be the sole basis or
18 primary reason for continuing a foster care placement or terminating the parental rights of a parent of an Indian
19 child.

20 (4) (a) Evidence required under this section must show a causal relationship between the specific
21 conditions in the home and the likelihood that continued custody of the child will result in serious emotional or
22 physical damage to the child who is the subject of the child custody proceeding.

23 (b) Evidence showing only the existence of community or family poverty, isolation, single
24 parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social
25 behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt
26 that continued custody is likely to result in serious emotional or physical damage to the child.

27
28 **NEW SECTION. Section 16. Emergency removal of Indian child.** (1) Nothing in [sections 1 through

1 20] may be construed to prevent the department from removing an Indian child from the Indian child's parent or
2 Indian custodian or prevent the emergency placement of the Indian child in a foster home, under applicable
3 state law, to prevent imminent physical damage or harm to the Indian child.

4 (2) An emergency removal or placement of an Indian child under state law must terminate
5 immediately when the emergency removal or placement is no longer necessary to prevent imminent physical
6 damage or harm to the child.

7 (3) A state court shall:

8 (a) make a finding on the record that the emergency removal or placement is necessary to prevent
9 imminent physical damage or harm to the child;

10 (b) promptly hold a hearing on whether the emergency removal or placement continues to be
11 necessary whenever new information indicates that the emergency situation has ended;

12 (c) at any court hearing during the emergency proceeding, determine whether the emergency
13 removal or placement is no longer necessary to prevent imminent physical damage or harm to the child; and

14 (d) immediately terminate or direct the department to terminate the emergency removal if the court
15 or department possesses sufficient evidence to determine that the emergency removal or placement is no
16 longer necessary to prevent imminent physical damage or harm to the child.

17 (4) An emergency proceeding may be terminated by any of the following actions:

18 (a) initiation of a child custody proceeding subject to the provisions of the federal Indian Child
19 Welfare Act and [sections 1 through 20];

20 (b) transfer of the child to the jurisdiction of the appropriate Indian tribe; or

21 (c) restoring the child to the parent or Indian custodian.

22 (5) A petition for a court order authorizing the emergency removal or placement, or its
23 accompanying documents, must contain a statement of the risk of imminent physical damage or harm to the
24 Indian child, any evidence that the emergency removal or placement continues to be necessary to prevent the
25 damage or harm, and if available:

26 (a) the full name, age, and last known address of the Indian child;

27 (b) the name and address of the child's parents and Indian custodians, if any;

28 (c) the steps taken to provide notice to the child's parents, Indian custodians, and tribe about the

1 emergency proceeding;

2 (d) if the child's parents and Indian custodians are unknown, a detailed explanation of the efforts
3 made to locate and contact the individuals, including contact with the appropriate bureau of Indian affairs
4 regional director;

5 (e) the residence or the domicile of the Indian child;

6 (f) if either the residence or the domicile of the Indian child is believed to be on a reservation or in
7 an Alaska Native village, the name of the tribe affiliated with that reservation or village;

8 (g) the tribal affiliation of the child and of the parents or Indian custodians;

9 (h) a specific and detailed account of the circumstances that led the agency responsible for the
10 emergency removal of the child to remove the child;

11 (i) if the child is believed to reside or be domiciled on a reservation where the tribe exercises
12 exclusive jurisdiction over child custody matters, a statement of the efforts made and being made to contact the
13 tribe and transfer the child to the tribe's jurisdiction; and

14 (j) a statement of the efforts made to assist the parents or Indian custodians so the Indian child
15 may be safely returned to the parents or Indian custodians.

16 (6) Contact made to provide notice of an emergency removal and reported pursuant to subsection
17 (5)(c) does not constitute the notice required under [section 8] for the purposes of subsequent dependency,
18 termination of parental rights, or adoption proceedings.

19 (7) An emergency proceeding regarding an Indian child may not be continued for more than 30
20 days unless the court determines that:

21 (a) restoring the child to the parent or Indian custodian would subject the child to imminent
22 physical damage or harm;

23 (b) the court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian
24 tribe; and

25 (c) it has not been possible to initiate a child custody proceeding.

26

27 **NEW SECTION. Section 17. Consent.** (1) At an involuntary foster care placement hearing, a
28 stipulation or consent by the parent or Indian custodian is not valid unless the court certifies on the record that

1 the terms and consequences of the stipulation or consent were fully explained in detail and were fully
2 understood by the parent or Indian custodian. The court shall certify on the record that the parent or Indian
3 custodian fully understood the explanation in English or that the explanation was translated into a language that
4 the parent or Indian custodian understood.

5 (2) In a voluntary proceeding for foster care placement or termination of parental rights, consent by
6 a parent or Indian custodian is not valid unless the consent is:

7 (a) executed in writing and recorded before a judge of a court of competent jurisdiction; and

8 (b) accompanied by the judge's written certificate that:

9 (i) the terms and consequences of the consent were fully explained in detail and were fully
10 understood by the parent or Indian custodian; and

11 (ii) the parent or Indian custodian fully understood the explanation in English or that the
12 explanation was translated into a language that the parent or Indian custodian understood.

13 (3) Voluntary consent for release of custody given prior to or within 10 days after the birth of an
14 Indian child may not be considered valid.

15 (4) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care
16 placement at any time. On withdrawal of consent, the Indian child must be returned to the parent or Indian
17 custodian.

18 (5) In a voluntary proceeding for termination of parental rights to or adoptive placement of an
19 Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an
20 order terminating parental rights or a final decree of adoption, and the Indian child must be returned to the
21 parent.

22 (6) (a) After the entry of a final decree of adoption of an Indian child, the parent may withdraw
23 consent to the adoption on the grounds that consent was obtained through fraud or duress. On a finding that
24 consent was obtained through fraud or duress, the court shall vacate the decree and return the Indian child to
25 the parent.

26 (b) An adoption that has been effective for at least 2 years may not be invalidated under this
27 section unless otherwise allowed by law.

28

1 **NEW SECTION. Section 18. Improper removal of Indian child.** If a petitioner in a child custody
2 proceeding under [sections 1 through 20] has improperly removed an Indian child from the custody of the
3 parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of
4 custody, the court shall decline jurisdiction over the petition and shall immediately return the Indian child to the
5 parent or Indian custodian unless returning the Indian child to the parent or Indian custodian would subject the
6 Indian child to substantial and immediate danger or threat of substantial or immediate danger.

7
8 **NEW SECTION. Section 19. Removal of Indian child from adoptive or foster care placement.** (1)
9 If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily
10 consent to the termination of their parental rights to the Indian child, the biological parent or prior Indian
11 custodian may petition to have the Indian child returned to the custody of the parent or Indian custodian. The
12 court shall grant the request unless there is a showing by clear and convincing evidence that return of custody
13 to the biological parent or Indian custodian is not in the best interests of the child.

14 (2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home
15 for the purposes of further foster care or a preadoptive or adoptive placement, the placement must be made in
16 accordance with [sections 1 through 20] unless an Indian child is being returned to the parent or Indian
17 custodian from whose custody the child was originally removed.

18
19 **NEW SECTION. Section 20. Placement preferences.** (1) When an emergency removal, foster care
20 placement, or preadoptive placement of an Indian child is necessary, the petitioning party shall, in the absence
21 of good cause to the contrary, place the Indian child in the least restrictive setting that:

- 22 (a) most closely approximates a family situation;
23 (b) is in reasonable proximity to the Indian child's home; and
24 (c) allows for the Indian child's special needs, if any, to be met.

25 (2) In a foster care or preadoptive placement, preference must be given, in the absence of good
26 cause to the contrary, to the Indian child's placement with one of the following, in descending order of priority:

- 27 (a) an Indian child's extended family member;
28 (b) a foster home licensed, approved, or specified by the Indian child's tribe;

1 (c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

2 (d) an institution for children approved by an Indian tribe or operated by an Indian organization that
3 has a program suitable to meet the Indian child's needs.

4 (3) In the absence of good cause to the contrary, in an adoptive or other permanent placement of
5 an Indian child, preference must be given to a placement with one of the following, in descending order of
6 priority:

7 (a) extended family members;

8 (b) an Indian family of the same tribe as the Indian child;

9 (c) an Indian family that is of a similar culture to the Indian child's tribe; or

10 (d) another Indian family.

11 (4) Notwithstanding the placement preferences listed in subsections (2) and (3), if a different order
12 of placement preference is established by the Indian child's tribe, the court or agency implementing the
13 placement shall follow the order of preference established by the tribe if the placement is in the least restrictive
14 setting appropriate to the particular needs of the Indian child and within reasonable proximity to the child's
15 home.

16 (5) When appropriate, the preference of the Indian child or the child's parent must be considered
17 by the court.

18 (6) The standards to be applied in meeting the preference requirements of this section must be the
19 prevailing social and cultural standards of the Indian community in which the parent or extended family
20 members of an Indian child reside or with which the parent or extended family members maintain social and
21 cultural ties.

22 (7) Nothing in this section prevents the department or the court from placing an Indian child with a
23 parent to effectuate a permanency plan regardless of the parent's relationship to the Indian child's tribe.

24 (8) (a) If any party asserts that good cause to not follow the placement preferences exists, the
25 reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the
26 child custody proceeding and the court.

27 (b) The party seeking departure from the placement preferences bears the burden of proving by
28 clear and convincing evidence that there is good cause to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:

(i) the request of one or both of the Indian child's parents on attestation that they have reviewed the placement options, if any, that comply with the order of preference provided for in subsections (2) and (3);

(ii) the request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

(iii) the presence of a sibling attachment that can be maintained only through a particular placement;

(iv) the extraordinary physical, mental, or emotional needs of the Indian child, including but not limited to specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; or

(v) the unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but no suitable placement was found. For the purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) A placement may not depart from the preferences based:

(i) on the socioeconomic status of any placement relative to another placement; or

(ii) solely on ordinary bonding or attachment.

Section 21. Section 40-6-405, MCA, is amended to read:

"40-6-405. Surrender of newborn to emergency services provider -- temporary protective custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

- 1 (2) The emergency services provider shall make a reasonable effort to do all of the following:
- 2 (a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the
- 3 newborn to the department to be placed for adoption according to law;
- 4 (b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody
- 5 of the newborn;
- 6 (c) if possible, ascertain whether the newborn has a tribal affiliation and, if so, ascertain relevant
- 7 information pertaining to any Indian heritage of the newborn;
- 8 (d) provide the parent with written material approved by or produced by the department, which
- 9 includes but is not limited to all of the following statements:
- 10 (i) by surrendering the newborn, the parent is releasing the newborn to the department to be
- 11 placed for adoption and the department shall initiate court proceedings according to law to place the newborn
- 12 for adoption, including proceedings to terminate parental rights;
- 13 (ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of
- 14 the newborn;
- 15 (iii) the parent may not receive personal notice of the court proceedings begun by the department;
- 16 (iv) information that the parent provides to an emergency services provider will not be made public;
- 17 (v) a parent may contact the department for more information and counseling; and
- 18 (vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the federal
- 19 Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20].
- 20 (3) After providing a parent with the information described in subsection (1), if possible, an
- 21 emergency services provider shall make a reasonable effort to:
- 22 (a) encourage the parent to provide any relevant family or medical information, including
- 23 information regarding any tribal affiliation;
- 24 (b) provide the parent with information that the parent may receive counseling or medical attention;
- 25 (c) inform the parent that information that the parent provides will not be made public;
- 26 (d) ask the parent for the parent's name;
- 27 (e) inform the parent that in order to place the newborn for adoption, the state is required to make
- 28 a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the

1 parent to identify the other parent;

2 (f) inform the parent that the department can provide confidential services to the parent; and

3 (g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a
4 hearing to terminate parental rights."

5

6 **Section 22.** Section 40-6-407, MCA, is amended to read:

7 **"40-6-407. Assumption of care, custody, and control by department -- placement of child --**

8 **presumptions -- Montana birth certificate.** (1) Upon receipt of notice under 40-6-406, the department shall:

9 (a) immediately assume the care, control, and temporary protective custody of the newborn;

10 (b) if a parent is known and willing, immediately meet with the parent;

11 (c) make a temporary placement of the newborn;

12 (d) immediately request assistance from law enforcement officials to investigate and determine,
13 through the national center for missing and exploited children and any other national and state missing children
14 information programs, whether the newborn is a missing child;

15 (e) not later than 48 hours after assuming the care, control, and temporary protective custody of
16 the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, and, if applicable,
17 [sections 1 through 20], requesting appropriate relief with the goal of achieving permanent placement for the
18 newborn at the earliest possible date; and

19 (f) within 30 days, make reasonable efforts to identify and locate a parent who did not surrender
20 the newborn. If the identity and address of that parent are unknown, the department shall provide notice by
21 publication in a newspaper of general circulation in the county where the newborn was surrendered.

22 (2) The department, after assuming the care, custody, and control of a newborn under subsection
23 (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not required
24 to search for relatives of the newborn as a placement or permanency option or to implement other placement
25 requirements that give preference to relatives if the department does not have information as to the identity of
26 the newborn or either of the newborn's parents. The department shall place the newborn with prospective
27 adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding
28 the newborn's medical history, date of birth, or age if the department has that information.

(3) A newborn surrendered under 40-6-405 is presumed to have been born in Montana unless the biological parent otherwise informs the department or the emergency services provider to whom the newborn is surrendered.

(4) A Montana birth certificate may be issued based on the presumption of birth in Montana as provided in subsection (3). A birth certificate issued to a newborn surrendered under 40-6-405 must provide a date of birth based on either the actual date of birth, if known, or on the date of birth determined by the physician who performs the medical examination of the newborn under 40-6-406."

Section 23. Section 40-6-413, MCA, is amended to read:

"40-6-413. Custody action -- order. Based on the court's finding of the newborn's best interest under 40-6-412, the court may issue an order:

(1) granting legal or physical custody, or both, of the newborn to the parent and either retaining or relinquishing jurisdiction; or

(2) denying custody of the newborn to the parent and referring the matter to the department or county attorney for proceedings under Title 41, chapter 3, and, if applicable, [sections 1 through 20]."

Section 24. Section 40-6-414, MCA, is amended to read:

"40-6-414. Presumption of waiver of parental rights -- department to file petition. (1) A-Except as provided in [section 17], a parent who surrenders a newborn under 40-6-405 and who does not file a custody action under 40-6-411 is presumed to have knowingly waived the parent's parental rights to the newborn.

(2) If a custody action is not filed under 40-6-411 or if the parent is denied custody of the newborn under 40-6-413, the department shall file a petition under Title 41, chapter 3, part 4, or, if applicable, [sections 1 through 20], requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date."

Section 25. Section 40-6-1001, MCA, is amended to read:

"40-6-1001. Petition for termination -- criteria -- process. (1) A district court may order a termination of the parent-child legal relationship after the filing of a petition pursuant to this section alleging the

1 factual grounds for termination as provided for in subsection (2).

2 (2) Grounds for termination pursuant to this section exist when the parent of a child:

3 (a) is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a
4 delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse
5 occurred and, as a result of the sexual intercourse, the child is born; or

6 (b) at a fact-finding hearing is found by clear and convincing evidence, except as provided in the
7 federal Indian Child Welfare Act and [sections 1 through 20], if applicable, to have committed an act of sexual
8 intercourse without consent, sexual assault, or incest that caused the child to be conceived.

9 (3) The court's order must state the reasons for the decision.

10 (4) The victim of the crime or act may file a petition pursuant to this section. If the victim is a minor,
11 the victim's parent or guardian may file a petition on the victim's behalf.

12 (5) The respondent to the petition has the right to counsel in all proceedings held pursuant to the
13 petition.

14 (6) Before termination of the parent-child legal relationship may be ordered, the court shall
15 determine whether the provisions of 40-6-1002 and 40-6-1003 have been followed.

16 (7) There is no right to a jury trial at proceedings held to consider the termination of a parent-child
17 legal relationship.

18 (8) (a) An order for the termination of the parent-child legal relationship divests the child and the
19 parent of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in
20 Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except:

21 (i) the right of the child to inherit from the parent; and

22 (ii) that nothing in this section may be construed to relieve the parent whose rights are terminated
23 as provided in this part of any child support obligations as provided in Title 40, chapters 4 and 5.

24 (b) An order or decree entered pursuant to this part may not disentitle a child to any benefit due to
25 the child from a third person, including but not limited to an Indian tribe, an agency, a state, or the United
26 States."

27

28 **Section 26.** Section 40-7-135, MCA, is amended to read:

1 **"40-7-135. Application to Indian tribes.** (1) A child custody proceeding that pertains to an Indian
2 child as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4] is not subject to
3 this chapter to the extent that it is governed by the federal Indian Child Welfare Act or [sections 1 through 20].

4 (2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of
5 applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, 40-7-134 through 40-
6 7-140, and part 2 of this chapter.

7 (3) A child custody determination made by a tribe under factual circumstances in substantial
8 conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this
9 chapter."

10
11 **Section 27.** Section 41-3-102, MCA, is amended to read:

12 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

13 (1) (a) "Abandon", "abandoned", and "abandonment" mean:

14 (i) leaving a child under circumstances that make reasonable the belief that the parent does not
15 intend to resume care of the child in the future;

16 (ii) willfully surrendering physical custody for a period of 6 months and during that period not
17 manifesting to the child and the person having physical custody of the child a firm intention to resume physical
18 custody or to make permanent legal arrangements for the care of the child;

19 (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable
20 efforts to identify and locate the parent have failed; or

21 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than
22 30 days old to an emergency services provider, as defined in 40-6-402.

23 (b) The terms do not include the voluntary surrender of a child to the department solely because of
24 parental inability to access publicly funded services.

25 (2) "A person responsible for a child's welfare" means:

26 (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which
27 the child resides;

28 (b) a person providing care in a day-care facility;

1 (c) an employee of a public or private residential institution, facility, home, or agency; or

2 (d) any other person responsible for the child's welfare in a residential setting.

3 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or
4 neglect.

5 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care
6 recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the
7 withholding of medically indicated treatment or medically indicated psychological care permitted or authorized
8 under state law.

9 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the
10 sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care
11 for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the
12 state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm
13 to the child.

14 (5) "Best interests of the child" means the physical, mental, and psychological conditions and
15 needs of the child and any other factor considered by the court to be relevant to the child.

16 (6) "Child" or "youth" means any person under 18 years of age.

17 (7) (a) "Child abuse or neglect" means:

18 (i) actual physical or psychological harm to a child;

19 (ii) substantial risk of physical or psychological harm to a child; or

20 (iii) abandonment.

21 (b) (i) The term includes:

22 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological
23 harm to a child by the acts or omissions of a person responsible for the child's welfare;

24 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the
25 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an
26 unlawful clandestine laboratory, as prohibited by 45-9-132; or

27 (C) any form of child sex trafficking or human trafficking.

28 (ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and

1 substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

2 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act ~~is or~~ [sections 1
3 through 20] are applicable, this term has the same meaning as "serious emotional or physical damage to the
4 child" as used in 25 U.S.C. 1912(f).

5 (d) The term does not include self-defense, defense of others, or action taken to prevent the child
6 from self-harm that does not constitute physical or psychological harm to a child.

7 (8) "Child protection specialist" means an employee of the department who investigates allegations
8 of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

9 (9) "Concurrent planning" means to work toward reunification of the child with the family while at
10 the same time developing and implementing an alternative permanent plan.

11 (10) "Department" means the department of public health and human services provided for in 2-15-
12 2201.

13 (11) "Family engagement meeting" means a meeting that involves family members in either
14 developing treatment plans or making placement decisions, or both.

15 (12) "Indian child" ~~means any unmarried person who is under 18 years of age and who is either:~~

16 ~~(a) a member of an Indian tribe; or~~

17 ~~(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe~~
18 has the meaning provided in [section 4].

19 (13) "Indian child's tribe" ~~means:~~

20 ~~(a) the Indian tribe in which an Indian child is a member or eligible for membership; or~~

21 ~~(b) in the case of an Indian child who is a member of or eligible for membership in more than one~~
22 ~~Indian tribe, the Indian tribe with which the Indian child has the more significant contacts~~ has the meaning
23 provided in [section 4].

24 (14) "Indian custodian" ~~means any Indian person who has legal custody of an Indian child under~~
25 ~~tribal law or custom or under state law or to whom temporary physical care, custody, and control have been~~
26 ~~transferred by the child's parent~~ has the meaning provided in [section 4].

27 (15) "Indian tribe" ~~means any Indian tribe, band, nation, or other organized group or community of~~
28 ~~Indians recognized by:~~

1 ~~(a) the state of Montana; or~~

2 ~~(b) the United States secretary of the interior as being eligible for the services provided to Indians or~~
3 ~~because of the group's status as Indians, including any Alaskan native village as defined in federal law~~ has the
4 meaning provided in [section 4].

5 (16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-
6 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person
7 who is 18 years of age or older.

8 (17) "Parent" means a biological or adoptive parent or stepparent.

9 (18) "Parent-child legal relationship" means the legal relationship that exists between a child and the
10 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
11 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

12 (19) "Permanent placement" means reunification of the child with the child's parent, adoption,
13 placement with a legal guardian, placement with a fit and willing relative, or placement in another planned
14 permanent living arrangement until the child reaches 18 years of age.

15 (20) "Physical abuse" means an intentional act, an intentional omission, or gross negligence
16 resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns,
17 bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or
18 function, or death.

19 (21) "Physical neglect" means either failure to provide basic necessities, including but not limited to
20 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
21 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing
22 the child to be exposed to an unreasonable physical or psychological risk to the child.

23 (22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the
24 parent or other person responsible for the child's welfare:

25 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological
26 abuse or neglect;

27 (ii) commits or allows sexual abuse or exploitation of the child;

28 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child

1 was abused or neglected by a parent or other person responsible for the child's welfare;

2 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate
3 food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or
4 offered financial or other reasonable means to do so;

5 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or
6 welfare by failing to intervene or eliminate the risk; or

7 (vi) abandons the child.

8 (b) The term does not include a youth not receiving supervision solely because of parental inability
9 to control the youth's behavior.

10 (23) (a) "Protective services" means services provided by the department:

11 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

12 (ii) to enable a child alleged to have been abused or neglected who has been removed from the
13 home to safely return to the home; or

14 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances
15 and the best interests of the child prevent reunification with parents or a return to the home.

16 (b) The term includes emergency protective services provided pursuant to 41-3-301, written
17 prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to
18 parts 4 and 6 of this chapter.

19 (24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions
20 that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the
21 commission of acts of violence against another person residing in the child's home.

22 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime
23 against the victim.

24 (25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to
25 the federal Indian Child Welfare Act or [sections 1 through 20] means:

26 ~~(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable~~
27 ~~in tribal customs as they pertain to family organization and child-rearing practices;~~

28 ~~(b) a lay expert witness who has substantial experience in the delivery of child and family services to~~

1 ~~Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within~~
2 ~~the Indian child's tribe; or~~

3 ~~(c) a professional person who has substantial education and experience in providing services to~~
4 ~~children and families and who possesses significant knowledge of and experience with Indian culture, family~~
5 ~~structure, and child-rearing practices in general~~ a person who meets the provisions of [section 13].

6 (26) "Qualified individual" means a trained professional or licensed clinician who:

7 (a) has expertise in the therapeutic needs assessment used for placement of youth in a
8 therapeutic group home;

9 (b) is not an employee of the department; and

10 (c) is not connected to or affiliated with any placement setting in which children are placed.

11 (27) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe
12 that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known
13 to the person.

14 (28) "Residential setting" means an out-of-home placement where the child typically resides for
15 longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

16 (29) "Safety and risk assessment" means an evaluation by a child protection specialist following an
17 initial report of child abuse or neglect to assess the following:

18 (a) the existing threat or threats to the child's safety;

19 (b) the protective capabilities of the parent or guardian;

20 (c) any particular vulnerabilities of the child;

21 (d) any interventions required to protect the child; and

22 (e) the likelihood of future physical or psychological harm to the child.

23 (30) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
24 consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a
25 minor, or incest, as described in Title 45, chapter 5.

26 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area
27 while attending to the sanitary or health care needs of that infant or toddler by a parent or other person
28 responsible for the child's welfare.

1 (31) "Sexual exploitation" means:

2 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
3 45-5-601 through 45-5-603;

4 (b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

5 (c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

6 (32) "Therapeutic needs assessment" means an assessment performed by a qualified individual
7 within 30 days of placement of a child in a therapeutic group home that:

8 (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,
9 validated, functional assessment tool;

10 (b) determines whether the needs of the child can be met with family members or through
11 placement in a youth foster home or, if not, which appropriate setting would provide the most effective and
12 appropriate level of care for the child in the least restrictive environment and be consistent with the short-term
13 and long-term goals for the child as specified in the child's permanency plan; and

14 (c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

15 (33) "Treatment plan" means a written agreement between the department and the parent or
16 guardian or a court order that includes action that must be taken to resolve the condition or conduct of the
17 parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve
18 court services, the department, and other parties, if necessary, for protective services.

19 (34) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
20 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication,
21 that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in
22 ameliorating or correcting the conditions.

23 (b) The term does not include the failure to provide treatment, other than appropriate nutrition,
24 hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical
25 judgment:

26 (i) the infant is chronically and irreversibly comatose;

27 (ii) the provision of treatment would:

28 (A) merely prolong dying;

- 1 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
- 2 (C) otherwise be futile in terms of the survival of the infant; or
- 3 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
- 4 treatment itself under the circumstances would be inhumane. For purposes of this subsection (34), "infant"
- 5 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
- 6 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference
- 7 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued
- 8 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws
- 9 regarding medical neglect of children 1 year of age or older.

10 (35) "Youth in need of care" means a youth who has been adjudicated or determined, after a

11 hearing, to be or to have been abused, neglected, or abandoned."

12

13 **Section 28.** Section 41-3-103, MCA, is amended to read:

14 **"41-3-103. Jurisdiction and venue.** (1) Except as provided in the federal Indian Child Welfare Act or

15 [sections 1 through 20], in all matters arising under this chapter, a person is subject to a proceeding under this

16 chapter and the district court has jurisdiction over:

- 17 (a) a youth who is within the state of Montana for any purpose;
- 18 (b) a youth or other person subject to this chapter who under a temporary or permanent order of
- 19 the court has voluntarily or involuntarily left the state or the jurisdiction of the court;
- 20 (c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for
- 21 any purpose;
- 22 (d) a youth or youth's parent or guardian who resides in Montana;
- 23 (e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing
- 24 of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in
- 25 Montana.
- 26 (2) Venue is proper in the county where a youth is located or has resided within 180 days before
- 27 the filing of a petition under this part or a county where the youth's parent or guardian resides or has resided
- 28 within 180 days before the filing of a petition under this part."

1

2 **Section 29.** Section 41-3-109, MCA, is amended to read:

3 **"41-3-109. Proceedings subject to Indian Child Welfare Act Acts.** If a proceeding under this
4 chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or
5 [section 4], the proceeding is subject to the federal Indian Child Welfare Act and [sections 1 through 20]."

6

7 **Section 30.** Section 41-3-128, MCA, is amended to read:

8 **"41-3-128. Certificate requirements -- supervision -- fees.** (1) An applicant for certification as a
9 child protection specialist shall:

10 (a) successfully complete a course in child protection, as defined by the department by rule, which
11 must include training in:

- 12 (i) ethics;
- 13 (ii) governing statutory and regulatory framework;
- 14 (iii) role of law enforcement;
- 15 (iv) crisis intervention techniques;
- 16 (v) childhood trauma research;
- 17 (vi) evidence-based practices for family preservation and strengthening; and
- 18 (vii) the provisions of the federal Indian Child Welfare Act, 25 U.S.C. 1902, et seq., and [sections 1
19 through 20]; and

20 (b) demonstrate the applicant's ability to perform all essential functions of the certified child
21 protection role by earning a passing score on a competency examination developed pursuant to 41-3-130.

22 (2) As a prerequisite to the issuance of a certificate, the department shall require the applicant to
23 submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and
24 the federal bureau of investigation as provided in 37-1-307.

25 (3) An applicant who has a history of criminal convictions has the opportunity to demonstrate to the
26 department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny
27 the certificate if it determines that the applicant is not sufficiently rehabilitated."

28

1 **Section 31.** Section 41-3-205, MCA, is amended to read:

2 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
3 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
4 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential
5 except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or
6 knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a
7 misdemeanor.

8 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it.
9 The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue
10 before it.

11 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews,
12 unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to
13 the child or harmful to another person who is a subject of information contained in the records, may be
14 disclosed to the following persons or entities in this state and any other state or country:

15 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian
16 tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect
17 and that otherwise meets the disclosure criteria contained in this section;

18 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
19 family or child who is the subject of a report in the records or to a person authorized by the department to
20 receive relevant information for the purpose of determining the best interests of a child with respect to an
21 adoptive placement;

22 (c) a health or mental health professional who is treating the family or child who is the subject of a
23 report in the records;

24 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in
25 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in
26 the records or other person responsible for the child's welfare, without disclosure of the identity of any person
27 who reported or provided information on the alleged child abuse or neglect incident contained in the records;

28 (e) a child named in the records who was allegedly abused or neglected or the child's legal

- 1 guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate
2 appointed by the court to represent a child in a pending case;
- 3 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);
- 4 (g) approved foster and adoptive parents who are or may be providing care for a child;
- 5 (h) a person about whom a report has been made and that person's attorney, with respect to the
6 relevant records pertaining to that person only and without disclosing the identity of the reporter or any other
7 person whose safety may be endangered;
- 8 (i) an agency, including a probation or parole agency, that is legally responsible for the
9 supervision of an alleged perpetrator of child abuse or neglect;
- 10 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project
11 and that is authorized by the department to conduct the research or evaluation;
- 12 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a
13 family engagement meeting for the purposes of assessing the needs of the child and family, formulating a
14 treatment plan, and monitoring the plan;
- 15 (l) the coroner or medical examiner when determining the cause of death of a child;
- 16 (m) a child fatality review team recognized by the department;
- 17 (n) a department or agency investigating an applicant for a license or registration that is required to
18 operate a youth care facility, day-care facility, or child-placing agency;
- 19 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
20 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
21 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
22 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
23 children posed by the person about whom the information is sought, as determined by the department.
- 24 (p) the news media, if disclosure is limited to confirmation of factual information regarding how the
25 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
26 guardian, as determined by the department;
- 27 (q) an employee of the department or other state agency if disclosure of the records is necessary
28 for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act or [sections 1 through 20];

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) an attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a child protection specialist, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county or regional interdisciplinary child information and school safety team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) (a) The records described in subsection (3) must be disclosed to a member of the United States congress or a member of the Montana legislature if all of the following requirements are met:

(i) the member receives a written inquiry regarding a child and whether the laws of the United States or the state of Montana that protect children from abuse or neglect are being complied with or whether the laws need to be changed to enhance protections for children;

(ii) the member submits a written request to the department requesting to review the records relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the child whose records are to be reviewed, and any other information that will assist the department in locating the records.

(iii) before reviewing the records, the member:

(A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties

1 for unauthorized release of the information; and

2 (B) receives from the department an orientation of the content and structure of the records.

3 (b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for
4 the member to view but may not be copied, recorded, photographed, or otherwise replicated by the member,
5 and must remain solely in the department's possession. The member must be allowed to view the records in
6 the local office where the case is or was active.

7 (c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date
8 the written request to review records was received by the department.

9 (5) (a) The records described in subsection (3) must be promptly released to any of the following
10 individuals upon a written request by the individual to the department or the department's designee:

11 (i) the attorney general;

12 (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect
13 occurred;

14 (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect
15 occurred; or

16 (iv) the office of the child and family ombudsman.

17 (b) The records described in subsection (3) must be promptly disclosed by the department to an
18 appropriate individual described in subsection (5)(a) or to a county or regional interdisciplinary child information
19 and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating
20 that any of the following has occurred:

21 (i) the death of the child as a result of child abuse or neglect;

22 (ii) a sexual offense, as defined in 46-23-502, against the child;

23 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502;

24 or

25 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances
26 constituting the criminal manufacture or distribution of dangerous drugs.

27 (c) (i) The department shall promptly disclose the results of an investigation to an individual
28 described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety

1 team established pursuant to 52-2-211 upon the determination that:

2 (A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or
3 Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or

4 (B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession
5 of a Schedule I or Schedule II drug that is prohibited by state law.

6 (ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted
7 to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have
8 contact with drug paraphernalia as defined in 45-10-101.

9 (d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be
10 released within 5 business days to the county attorney of the county in which the acts that are the subject of a
11 report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual
12 exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a)
13 and to a county or regional interdisciplinary child information and school safety team established pursuant to
14 52-2-211.

15 (ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides
16 confidential services to victims of sexual assault shall report to the department as provided in this part without
17 disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.

18 (iii) When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of
19 sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual
20 exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a
21 request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as
22 described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

23 (6) A school or school district may disclose, without consent, personally identifiable information
24 from the education records of a pupil to the department, the court, a review board, and the child's assigned
25 attorney, guardian ad litem, or special advocate.

26 (7) Information that identifies a person as a participant in or recipient of substance abuse treatment
27 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the
28 consent provisions of the law.

1 (8) The confidentiality provisions of this section must be construed to allow a court of this state to
2 share information with other courts of this state or of another state when necessary to expedite the interstate
3 placement of children.

4 (9) A person who is authorized to receive records under this section shall maintain the
5 confidentiality of the records and may not disclose information in the records to anyone other than the persons
6 described in subsections (3)(a) and (5). However, this subsection may not be construed to compel a family
7 member to keep the proceedings confidential.

8 (10) A news organization or its employee, including a freelance writer or reporter, is not liable for
9 reporting facts or statements made by an immediate family member under subsection (9) if the news
10 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
11 proceeding.

12 (11) This section is not intended to affect the confidentiality of criminal court records, records of law
13 enforcement agencies, or medical records covered by state or federal disclosure limitations.

14 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to
15 this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
16 guardian's attorney must be provided without cost."

17

18 **Section 32.** Section 41-3-301, MCA, is amended to read:

19 **" 41-3-301. (Temporary) Emergency protective service.** (1) Any child protection specialist of the
20 department, a peace officer, or the county attorney who has reason to believe any child is in immediate or
21 apparent danger of harm may immediately remove the child and place the child in a protective facility. After
22 ensuring that the child is safe, the department may make a request for further assistance from the law
23 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the
24 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
25 time the placement is made or as soon after placement as possible. Notification under this subsection must:

26 (a) include the reason for removal;

27 (b) include information regarding the option for an emergency protective services hearing within 5
28 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

1 (c) provide contact information for the child protection specialist, the child protection specialist's
2 supervisor, and the office of state public defender; and

3 (d) advise the parents, parent, guardian, or other person having physical or legal custody of the
4 child that the parents, parent, guardian, or other person:

5 (i) has the right to receive a copy of the affidavit as provided in subsection (6);

6 (ii) has the right to attend and participate in an emergency protective services hearing, if one is
7 requested, and the show cause hearing, including providing statements to the judge;

8 (iii) may have a support person present during any in-person meeting with the child protection
9 specialist concerning emergency protective services; and

10 (iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.

11 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
12 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
13 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
14 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
15 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
16 member of the household, the department shall take appropriate steps for the protection of the child, which may
17 include:

18 (a) making reasonable efforts to protect the child and prevent the removal of the child from the
19 parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or
20 family member;

21 (b) making reasonable efforts to remove the person who allegedly committed the partner or family
22 member assault or strangulation of a partner or family member from the child's residence if it is determined that
23 the child or another family or household member is in danger of partner or family member assault or
24 strangulation of a partner or family member; and

25 (c) providing services to help protect the child from being placed with or having unsupervised
26 visitation with the person alleged to have committed partner or family member assault or strangulation of a
27 partner or family member until the department determines that the alleged offender has met conditions
28 considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20], if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the child protection specialist shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

41-3-301. (Effective July 1, 2023) Emergency protective service. (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the

1 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
2 time the placement is made or as soon after placement as possible. Notification under this subsection must:

3 (a) include the reason for removal;

4 (b) include information regarding the emergency protective services and show cause hearings and
5 the purpose of the hearings; and

6 (c) advise the parents, parent, guardian, or other person having physical or legal custody of the
7 child that the parents, parent, guardian, or other person may have a support person present during any in-
8 person meeting with the child protection specialist concerning emergency protective services.

9 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
10 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
11 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
12 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
13 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
14 member of the household, the department shall take appropriate steps for the protection of the child, which may
15 include:

16 (a) making reasonable efforts to protect the child and prevent the removal of the child from the
17 parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or
18 family member;

19 (b) making reasonable efforts to remove the person who allegedly committed the partner or family
20 member assault or strangulation of a partner or family member from the child's residence if it is determined that
21 the child or another family or household member is in danger of partner or family member assault or
22 strangulation of a partner or family member; and

23 (c) providing services to help protect the child from being placed with or having unsupervised
24 visitation with the person alleged to have committed partner or family member assault or strangulation of a
25 partner or family member until the department determines that the alleged offender has met conditions
26 considered necessary to protect the safety of the child.

27 (3) If the department determines that an adult member of the household is the victim of partner or
28 family member assault or strangulation of a partner or family member, the department shall provide the adult

1 victim with a referral to a domestic violence program.

2 (4) A child who has been removed from the child's home or any other place for the child's
3 protection or care may not be placed in a jail.

4 (5) The department may locate and contact extended family members upon placement of a child in
5 out-of-home care. The department may share information with extended family members for placement and
6 case planning purposes.

7 (6) If a child is removed from the child's home by the department, a child protection specialist shall
8 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
9 copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An
10 abuse and neglect petition must be filed in accordance with 41-3-422 within 5 working days, excluding
11 weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for
12 the care of the child have been made by the parents or a written prevention plan has been entered into
13 pursuant to 41-3-302.

14 (7) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20], if
15 applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise
16 stipulated by the parties pursuant to 41-3-434.

17 (8) If the department determines that a petition for immediate protection and emergency protective
18 services must be filed to protect the safety of the child, the child protection specialist shall interview the parents
19 of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be
20 filed. The district court may immediately issue an order for immediate protection of the child.

21 (9) The department shall make the necessary arrangements for the child's well-being as are
22 required prior to the court hearing."
23

24 **Section 33.** Section 41-3-306, MCA, is amended to read:

25 **"41-3-306. (Temporary) Emergency protective services hearing on request -- exceptions.** (1) (a)
26 If requested by the parents, parent, guardian, or other person having physical or legal custody of a child
27 removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services
28 hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5

1 business days.

2 (b) The department shall provide notification of the option for the hearing as required under 41-3-
3 301.

4 (c) A hearing is not required if the child is released prior to the time of the requested hearing.

5 (2) The hearing may be held in person, by videoconference, or, if no other means are available, by
6 telephone.

7 (3) The child and the child's parents, parent, guardian, or other person having physical or legal
8 custody of the child must be represented by counsel at the hearing.

9 (4) If the court determines that continued out-of-home placement is needed, the court shall:

10 (a) establish guidelines for visitation by the parents, parent, guardian, or other person having
11 physical or legal custody of the child pending the show cause hearing; and

12 (b) review the availability of options for a kinship placement and make recommendations if
13 appropriate.

14 (5) The court may direct the department to develop and implement a treatment plan before the
15 show cause hearing if the parents, parent, guardian, or other person having physical or legal custody of the
16 child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment
17 plan if a plan is developed.

18 (6) If the court determines continued removal is not appropriate, the child must be immediately
19 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

20 (7) This section does not apply:

21 (a) in judicial districts that are holding voluntary prehearing conferences pursuant to 41-3-307; or

22 (b) to cases involving an Indian child who is subject to the federal Indian Child Welfare Act.

23 (8) The emergency protective services hearing is an emergency proceeding for the purposes of
24 [sections 1 through 20] and is not subject to the notice requirements of [sections 1 through 20]. (Terminates
25 June 30, 2023--sec. 8, Ch. 529, L. 2021.)

26 **41-3-306. (Effective July 1, 2023) Emergency protective services hearing -- exception.** (1) (a) A
27 district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to 41-3-
28 301 to determine whether there is probable cause to continue the removal beyond 5 business days.

- 1 (b) The department shall provide notification of the hearing as required under 41-3-301.
- 2 (c) A hearing is not required if the child is released prior to the time of the required hearing.
- 3 (2) The hearing may be held in person, by videoconference, or, if no other means are available, by
- 4 telephone.
- 5 (3) The child and the child's parents, parent, guardian, or other person having physical or legal
- 6 custody of the child must be represented by counsel at the hearing.
- 7 (4) If the court determines that continued out-of-home placement is needed, the court shall:
- 8 (a) establish guidelines for visitation by the parents, parent, guardian, or other person having
- 9 physical or legal custody of the child pending the show cause hearing; and
- 10 (b) review the availability of options for a kinship placement and make recommendations if
- 11 appropriate.
- 12 (5) The court may direct the department to develop and implement a treatment plan before the
- 13 show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child
- 14 stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if
- 15 a plan is developed.
- 16 (6) If the court determines continued removal is not appropriate, the child must be immediately
- 17 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.
- 18 (7) This section does not apply to cases involving an Indian child who is subject to the federal
- 19 Indian Child Welfare Act.
- 20 (8) The emergency protective services hearing is an emergency proceeding for the purposes of
- 21 [sections 1 through 20] and is not subject to the notice requirements of [sections 1 through 20]."
- 22

23 **Section 34.** Section 41-3-307, MCA, is amended to read:

24 **"41-3-307. (Temporary) Voluntary prehearing conferences -- pilot project counties.** (1) The

25 parents, parent, guardian, or other person having physical or legal custody of a child who has been removed

26 from the home pursuant to 41-3-301 may participate in a conference within 5 days of the child's removal and

27 before a show cause hearing held by the court if the court is participating in a pilot project testing the

28 effectiveness of prehearing conferences.

- 1 (2) A prehearing conference may be held under this section only if it involves:
- 2 (a) the parents, parent, guardian, or other person having physical or legal custody of the child;
- 3 (b) the person's legal counsel;
- 4 (c) the county attorney's office; and
- 5 (d) a department social worker.
- 6 (3) To the greatest degree possible using available funding, the meetings must be conducted by
- 7 an independent and trained facilitator.
- 8 (4) At a minimum, the meetings must involve discussion of:
- 9 (a) the child's current placement and options for continued placement if the child remains out of the
- 10 home;
- 11 (b) whether other options exist for an in-home safety plan or resource that may allow the child to
- 12 remain in the home;
- 13 (c) parenting time schedules; and
- 14 (d) treatment services for the family.
- 15 (5) This section does not apply to cases involving an Indian child who is subject to the federal
- 16 Indian Child Welfare Act or [sections 1 through 20].
- 17 (6) This section applies to a district court participating in the prehearing conference pilot project
- 18 funded by the court improvement program on May 14, 2021, and to any district court in a rural county or
- 19 multicounty district that chooses to hold conferences in accordance with this section on or after that date.
- 20 (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)"
- 21

22 **Section 35.** Section 41-3-422, MCA, is amended to read:

23 **"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter

24 must be initiated by the filing of a petition. A petition may request the following relief:

- 25 (i) immediate protection and emergency protective services, as provided in 41-3-427;
- 26 (ii) temporary investigative authority, as provided in 41-3-433;
- 27 (iii) temporary legal custody, as provided in 41-3-442;
- 28 (iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in 41-3-607;
(vi) appointment of a guardian pursuant to 41-3-444;
(vii) a determination that preservation or reunification services need not be provided; or
(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4], the standards of proof required for legal relief under the federal Indian Child Welfare Act and [sections 1 through 20] apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act and [sections 1 through 20], if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require. If personal service cannot be made upon a putative father, the court may not provide for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the opinion of the court, the interests of justice require counsel to be appointed or assigned.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the

1 child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this
2 section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is
3 presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the
4 best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in
5 the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings
6 held pursuant to this chapter involving the custody of the child.

7 (10) An abuse and neglect petition must state:

8 (a) the nature of the alleged abuse or neglect and of the relief requested;

9 (b) the full name, age, and address of the child and the name and address of the child's parents or
10 the guardian or person having legal custody of the child; and

11 (c) the names, addresses, and relationship to the child of all persons who are necessary parties to
12 the action.

13 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-
14 425.

15 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
16 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
17 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family
18 engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution
19 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department
20 is a party to the original proceeding, a representative of the department who has complete authority to settle the
21 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

22 (13) Service of a petition under this section must be accompanied by a written notice advising the
23 child's parent, guardian, or other person having physical or legal custody of the child of the:

24 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or
25 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1
26 through 20], if applicable;

27 (b) right to contest the allegations in the petition; and

28 (c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 36. Section 41-3-423, MCA, is amended to read:

"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. (1) (a) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state.

(b) (i) For the purposes of this subsection (1), the term "reasonable efforts" means the department shall in good faith develop and implement voluntary services agreements and treatment plans that are designed to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing voluntary services agreements and treatment plans.

(ii) The term includes but is not limited to:

(A) written prevention plans;

(B) development of individual written case plans specifying state efforts to preserve or reunify families;

(C) placement in the least disruptive setting possible with priority given to family placement as provided in 41-3-439;

(D) provision of services pursuant to a case plan that is designed to address the parent's treatment and other needs precluding the parent from safely parenting, including but not limited to individual and family therapy, parent education, substance abuse treatment, and trauma-related services; and

(E) periodic review of each case to ensure timely progress toward reunification or permanent placement.

(c) In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act or [sections 1 through 20], the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

- 1 (i) visiting the child at least monthly when physically and financially able to do so; or
- 2 (ii) having regular contact with the child or with the person or agency having the care and custody
- 3 of the child when physically and financially able to do so; and
- 4 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the
- 5 child was not in the physical custody of the other parent.
- 6 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person
- 7 has not been:
- 8 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or
- 9 (ii) recorded on the child's birth certificate as the child's father.
- 10 (4) A judicial finding that preservation or reunification services are not necessary under this section
- 11 must be supported by clear and convincing evidence.
- 12 (5) If the court finds that preservation or reunification services are not necessary pursuant to
- 13 subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable
- 14 efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must
- 15 be made to place the child in a timely manner in accordance with the permanency plan and to complete
- 16 whatever steps are necessary to finalize the permanent placement of the child.
- 17 (6) If reasonable efforts have been made to prevent removal of a child from the home or to return a
- 18 child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the
- 19 permanency plan for the child, the department shall make reasonable efforts to place the child in a timely
- 20 manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to
- 21 complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to
- 22 place a child permanently for adoption or to make an alternative out-of-home permanent placement may be
- 23 made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including
- 24 identifying in-state and out-of-state placements, may be used.
- 25 (7) When determining whether the department has made reasonable efforts to prevent the
- 26 necessity of removal of a child from the child's home or to reunify families that have been separated by the
- 27 state, the court shall review the services provided by the agency including, if applicable, protective services
- 28 provided pursuant to 41-3-302."

1

2 **Section 37.** Section 41-3-425, MCA, is amended to read:

3 **"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the
4 right to counsel in all proceedings held pursuant to the petition.

5 (2) Except as provided in subsections (3) through (5), the court shall immediately appoint the office
6 of state public defender to assign counsel for:

7 (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a
8 removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility
9 pursuant to 47-1-111;

10 (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a
11 guardian ad litem is not appointed for the child or youth; and

12 (c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act or
13 [sections 1 through 20].

14 (3) When appropriate, the court may appoint the office of state public defender to assign counsel
15 for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad
16 litem is appointed for the child or youth.

17 (4) When appropriate and in accordance with judicial branch policy, the court may assign counsel
18 at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding
19 under a petition filed pursuant to 41-3-422.

20 (5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20], a court
21 may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal,
22 placement, or termination proceeding pursuant to 41-3-422 until:

23 (a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

24 (b) the putative father makes a request to the court in writing to appoint the office of state public
25 defender to assign counsel."

26

27 **Section 38.** Section 41-3-427, MCA, is amended to read:

28 **"41-3-427. Petition for immediate protection and emergency protective services -- order --**

1 **service.** (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused
2 or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for
3 immediate protection and emergency protective services. In implementing the policy of this section, the child's
4 health and safety are of paramount concern.

5 (b) A petition for immediate protection and emergency protective services must state the specific
6 authority requested and must be supported by an affidavit signed by a representative of the department stating
7 in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the
8 case is subject to the federal Indian Child Welfare Act or [sections 1 through 20], clear and convincing evidence
9 that a child is abused or neglected or is in danger of being abused or neglected. The affidavit of the department
10 representative must contain information, if any, regarding statements made by the parents about the facts of
11 the case.

12 (c) If from the alleged facts presented in the affidavit it appears to the court that there is probable
13 cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 20], clear and
14 convincing evidence to believe that the child has been abused or neglected or is in danger of being abused and
15 neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2) until
16 the adjudication hearing or the temporary investigative hearing. If it appears from the alleged facts contained in
17 the affidavit that there is insufficient probable cause or, if the case is subject to the federal Indian Child Welfare
18 Act or [sections 1 through 20], clear and convincing evidence to believe that the child has been abused or
19 neglected or is in danger of being abused or neglected, the court shall dismiss the petition.

20 (d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney
21 for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the
22 person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of
23 the petition and affidavit.

24 (e) The petition for immediate protection and emergency protective services must include a notice
25 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
26 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
27 person present during any in-person meeting with a child protection specialist concerning emergency protective
28 services. Reasonable accommodation must be made in scheduling an in-person meeting with the child

1 protection specialist.

2 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the
3 federal Indian Child Welfare Act or [sections 1 through 20], clear and convincing evidence based on the petition
4 and affidavit, the court may issue an order for immediate protection of the child. The court shall consider the
5 parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If
6 the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1
7 through 20], clear and convincing evidence, the court may issue an order granting the following forms of relief,
8 which do not constitute a court-ordered treatment plan under 41-3-443:

9 (a) the right of entry by a peace officer or department worker;

10 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to
11 care provided by a noncustodial parent, kinship or foster family, group home, or institution;

12 (c) the right of the department to locate, contact, and share information with any extended family
13 members who may be considered as placement options for the child;

14 (d) a requirement that the parents, guardian, or other person having physical or legal custody
15 furnish information that the court may designate and obtain evaluations that may be necessary to determine
16 whether a child is a youth in need of care;

17 (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the
18 home to allow the child to remain in the home;

19 (f) a requirement that the parent provide the department with the name and address of the other
20 parent, if known, unless parental rights to the child have been terminated;

21 (g) a requirement that the parent provide the department with the names and addresses of
22 extended family members who may be considered as placement options for the child who is the subject of the
23 proceeding; and

24 (h) any other temporary disposition that may be required in the best interests of the child that does
25 not require an expenditure of money by the department unless the court finds after notice and a hearing that the
26 expenditure is reasonable and that resources are available for payment. The department is the payor of last
27 resort after all family, insurance, and other resources have been examined.

28 (3) An order for removal of a child from the home must include a finding that continued residence

1 of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best
2 interests of the child.

3 (4) The order for immediate protection of the child must require the person served to comply
4 immediately with the terms of the order and to appear before the court issuing the order on the date specified
5 for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt
6 or place temporary physical custody of the child with the department until further order.

7 (5) The petition must be served as provided in 41-3-422 or, if the case involves an Indian child, as
8 provided in [section 8]."

9

10 **Section 39.** Section 41-3-432, MCA, is amended to read:

11 **"41-3-432. Show cause hearing -- order.** (1) (a) Except as provided in the federal Indian Child
12 Welfare Act or [sections 1 through 20], a show cause hearing must be conducted within 20 days of the filing of
13 an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or
14 unless an extension of time is granted by the court. A separate notice to the court stating the statutory time
15 deadline for a hearing must accompany any petition to which the time deadline applies.

16 (b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian
17 Child Welfare Act or [sections 1 through 20], a qualified expert witness is required to testify that the continued
18 custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical
19 damage to the Indian child.

20 (c) The court may grant an extension of time for a show cause hearing only upon a showing of
21 substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

22 (2) The person filing the petition has the burden of presenting evidence establishing probable
23 cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as
24 provided by the federal Indian Child Welfare Act or [sections 1 through 20], if applicable.

25 (3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed
26 issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may
27 consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or
28 legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements

made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1 through 20], if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act or [section 8], if applicable, have been met.

(5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20], if applicable, the court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in

1 writing.

2 (8) If a child who has been removed from the child's home is not returned home after the show
3 cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having
4 physical or legal custody of the child named in the petition may request that a citizen review board, if available
5 pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a
6 recommendation to the district court, as provided in 41-3-1010.

7 (9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if
8 the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437
9 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the
10 parties pursuant to 41-3-434 and order of the court."

11

12 **Section 40.** Section 41-3-437, MCA, is amended to read:

13 **"41-3-437. Adjudication -- temporary disposition -- findings -- order.** (1) Upon the filing of an
14 appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-
15 432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or
16 may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the
17 time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by
18 the parties pursuant to 41-3-434, and unforeseen personal emergencies.

19 (2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a
20 preponderance of the evidence, except as provided in the federal Indian Child Welfare Act or [sections 1
21 through 20], if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the
22 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an
23 adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that
24 resulted in state intervention and upon which disposition, case work, court review, and possible termination are
25 based.

26 (3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the
27 whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers
28 relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is

1 admissible according to the Montana Rules of Evidence.

2 (4) In a case in which abandonment has been alleged by the county attorney, the attorney general,
3 or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person
4 appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

5 (a) the extent to which the child has been cared for, nurtured, or supported by a person other than
6 the child's parents; and

7 (b) whether the child was placed or allowed to remain by the parents with another person for the
8 care of the child, and, if so, then the court shall accept evidence regarding:

9 (i) the intent of the parents in placing the child or allowing the child to remain with that person;

10 (ii) the continuity of care the person has offered the child by providing permanency or stability in
11 residence, schooling, and activities outside of the home; and

12 (iii) the circumstances under which the child was placed or allowed to remain with that other
13 person, including:

14 (A) whether a parent requesting return of the child was previously prevented from doing so as a
15 result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

16 (B) whether the child was originally placed with the other person to allow the parent to seek
17 employment or attend school.

18 (5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the
19 examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and
20 the mediation privilege granted by 26-1-813.

21 (6) (a) If the court determines that the child is not an abused or neglected child, the petition must
22 be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

23 (b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional
24 hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required
25 investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The
26 temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

27 (7) (a) Before making an adjudication, the court may make oral findings, and following the
28 adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

- 1 (i) which allegations of the petition have been proved or admitted, if any;
- 2 (ii) whether there is a legal basis for continued court and department intervention; and
- 3 (iii) whether the department has made reasonable efforts to avoid protective placement of the child
- 4 or to make it possible to safely return the child to the child's home.
- 5 (b) The court may order:
- 6 (i) terms for visitation, support, and other intrafamily communication pending disposition if the
- 7 child is to be placed or to remain in temporary out-of-home care prior to disposition;
- 8 (ii) examinations, evaluations, or counseling of the child or parents in preparation for the
- 9 disposition hearing that does not require an expenditure of money by the department unless the court finds
- 10 after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The
- 11 department is the payor of last resort after all family, insurance, and other resources have been examined.
- 12 (iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not
- 13 already done;
- 14 (iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the
- 15 child to remain in the home; and
- 16 (v) the department to continue efforts to notify noncustodial parents.
- 17 (8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian
- 18 Child Welfare Act or [sections 1 through 20], a qualified expert witness is required to testify that the continued
- 19 custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical
- 20 damage to the Indian child."

21

22 **Section 41.** Section 41-3-444, MCA, is amended to read:

23 **"41-3-444. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1)**

24 The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian

25 for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-

26 438, 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (9) if the

27 guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

28 (2) The court may appoint a guardian for a child pursuant to this section if the following facts are

1 found by the court:

2 (a) the department has given its written consent to the appointment of the guardian, whether the
3 guardianship is to be subsidized or not;

4 (b) if the guardianship is to be subsidized, the department has given its written consent after the
5 department has considered initiating or continuing financial subsidies pursuant to subsection (9);

6 (c) the child has been adjudicated a youth in need of care;

7 (d) the department has made reasonable efforts to reunite the parent and child, further efforts to
8 reunite the parent and child by the department would likely be unproductive, and reunification of the parent and
9 child would be contrary to the best interests of the child;

10 (e) the child has lived with the potential guardian in a family setting and the potential guardian is
11 committed to providing a long-term relationship with the child;

12 (f) it is in the best interests of the child to remain or be placed with the potential guardian;

13 (g) either termination of parental rights to the child is not in the child's best interests or parental
14 rights to the child have been terminated, but adoption is not in the child's best interests; and

15 (h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as
16 defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4], the Indian child's tribe
17 has received notification from the state of the initiation of the proceedings.

18 (3) In the case of an abandoned child, the court may give priority to a member of the abandoned
19 child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if
20 placement with the extended family member is in the best interests of the child. If more than one extended
21 family member has requested to be appointed as guardian, the court may determine which extended family
22 member to appoint in the same manner provided for in 41-3-438(4).

23 (4) The entry of a decree of guardianship pursuant to this section terminates the custody of the
24 department and the involvement of the department with the child and the child's parents except for the
25 department's provision of a financial subsidy, if any, pursuant to subsection (9).

26 (5) A guardian appointed under this section may exercise the powers and has the duties provided
27 in 72-5-231.

28 (6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after

1 hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best
2 interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful
3 guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent
4 have not been terminated, and other persons directly interested in the welfare of the child.

5 (7) A guardian may petition the court for permission to resign the guardianship. A petition may
6 include a request for appointment of a successor guardian.

7 (8) After notice and hearing on a petition for removal or permission to resign, the court may appoint
8 a successor guardian or may terminate the guardianship and restore temporary legal custody to the department
9 pursuant to 41-3-438.

10 (9) The department may provide a financial subsidy to a guardian appointed pursuant to this
11 section if the guardianship meets the department's criteria and if the department determines that a subsidy is in
12 the best interests of the child. The amount of the subsidy must be determined by the department.

13 (10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."
14

15 **Section 42.** Section 41-3-609, MCA, is amended to read:

16 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
17 relationship upon a finding established by clear and convincing evidence, except as provided in the federal
18 Indian Child Welfare Act or [sections 1 through 20], if applicable, that any of the following circumstances exist:

19 (a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

20 (b) the child has been abandoned by the parents;

21 (c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor
22 adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which
23 sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

24 (d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through
25 (2)(e);

26 (e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

27 (f) the child is an adjudicated youth in need of care and both of the following exist:

28 (i) an appropriate treatment plan that has been approved by the court has not been complied with

1 by the parents or has not been successful; and

2 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a
3 reasonable time.

4 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
5 reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely
6 result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit,
7 unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall
8 consider but is not limited to the following:

9 (a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to
10 render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a
11 reasonable time;

12 (b) a history of violent behavior by the parent;

13 (c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
14 ability to care and provide for the child; and

15 (d) present judicially ordered long-term confinement of the parent.

16 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
17 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the
18 child.

19 (4) A treatment plan is not required under this part upon a finding by the court following hearing if:

20 (a) the parent meets the criteria of subsections (1)(a) through (1)(e);

21 (b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume
22 the role of parent within a reasonable time;

23 (c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the
24 parent is not in the best interests of the child because of the child's circumstances, including placement options,
25 age, and developmental, cognitive, and psychological needs; or

26 (d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect
27 by the parent has occurred.

28 (5) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian

1 Child Welfare Act or [sections 1 through 20], a qualified expert witness is required to testify that the continued
2 custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical
3 damage to the Indian child."
4

5 **Section 43.** Section 42-2-102, MCA, is amended to read:

6 **"42-2-102. Proceedings subject to Indian Child Welfare Act ~~Acts~~.** A proceeding under this title that
7 pertains to an Indian child, as defined in ~~the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq.,~~ [section
8 4], is subject to that act the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., and [sections 1
9 through 20]."
10

11 **Section 44.** Section 42-2-604, MCA, is amended to read:

12 **"42-2-604. Contents of petition for termination of parental rights.** (1) The petition for termination
13 of parental rights must state:

- 14 (a) the identity of the petitioner;
15 (b) the date and location of the birth of the child;
16 (c) the date of the relinquishment by the birth mother or relinquishing parent;
17 (d) the current location of the child;
18 (e) the names and locations, if known, of any putative or presumed father of the child;
19 (f) whether a parent is one from whom consent is not required;
20 (g) whether court orders from any other proceeding have been issued terminating parental rights
21 to the child that is the subject of the petition;
22 (h) any other evidence supporting termination of the legal rights that a person has with regard to
23 the child; and
24 (i) a request for temporary custody of the child prior to the adoption.

25 (2) The petitioner shall file with the petition for termination of parental rights the following
26 documents received in support of the petition:

- 27 (a) any relinquishments and consents to adoption;
28 (b) any denials of paternity;

- 1 (c) any acknowledgments of paternity and denial of parental rights;
2 (d) any affidavits from the putative father registry that have been executed by the department;
3 (e) the adoptive decision support services report required under 42-2-409;
4 (f) proof of prior service of any notice or acknowledgment of service or waiver of service received;
5 and
6 (g) proof of compliance with the federal Indian Child Welfare Act of 1978, [sections 1 through 20],
7 and Interstate Compact on the Placement of Children, if applicable."
8

9 **Section 45.** Section 42-4-102, MCA, is amended to read:

10 **"42-4-102. Duties of placing parent.** (1) A parent who is directly placing a child for adoption shall
11 execute a voluntary relinquishment and consent to adopt, including:

- 12 (a) receiving the adoptive decision support services required by 42-2-409; and
13 (b) if the parent is a minor, being advised by legal counsel other than the attorney representing the
14 prospective adoptive parent.

15 (2) A placing parent shall identify and provide information on the location of any other legal parent
16 or guardian of the child and any other person required to receive notice under 42-2-605, including:

- 17 (a) any current spouse;
18 (b) any spouse who is the other birth parent and to whom the parent was married at the probable
19 time of conception or birth of the child; and
20 (c) any adoptive parent.

21 (3) A placing parent shall identify and provide information pertaining to any Indian heritage of the
22 child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et
23 seq., or [sections 1 through 20].

24 (4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

- 25 (a) the disclosures of medical and social history required pursuant to 42-3-101;
26 (b) a certified copy of the child's birth certificate or other document certifying the place and date of
27 the child's birth; and
28 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

(5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice of parental placement.

(6) A parent placing a child for adoption in a direct parental placement adoption shall file a disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent or any person acting on behalf of the prospective adoptive parent.

(7) Subject to the limitations set in 42-7-102, expenses for adoptive decision support services, postadoptive counseling, outpatient mental health services, legal fees, and the reasonable costs of preparing reports documenting the required disclosures of medical and social history and the disclosures documenting disbursements are allowable expenses that can be paid for by the prospective adoptive parent."

Section 46. Section 42-4-103, MCA, is amended to read:

"42-4-103. Direct parental placement -- information to be filed. (1) A parent who proposes to place a child for adoption with a prospective adoptive parent who resides in Montana and who is not the child's stepparent or an extended family member shall file with the court of the county in which the prospective adoptive parent or the parent making the placement resides the following:

(a) a notice of parental placement containing the following information:

(i) the name and address of the placing parent;

(ii) the name and address of each prospective adoptive parent;

(iii) the name and address or expected date and place of birth of the child;

(iv) the identity and information on the location of any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including any current spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child, and any adoptive parent;

(v) all relevant information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 20]; and

(vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

- 1 (b) a relinquishment and consent to adoption of the child by the adoptive parent;
- 2 (c) the adoptive decision support services report required by 42-2-409;
- 3 (d) the medical and social history disclosures required by 42-3-101;
- 4 (e) a report of disbursements identifying all payments made to or to the benefit of the placing
- 5 parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement by
- 6 each person furnishing information in the report attesting to the truthfulness of the information furnished by that
- 7 person;
- 8 (f) a certified copy of the child's birth certificate or other document certifying the place and date of
- 9 the child's birth;
- 10 (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and
- 11 (h) the preplacement evaluation.
- 12 (2) The notice of parental placement must be signed by the parent making the placement."
- 13

14 **Section 47.** Section 42-4-203, MCA, is amended to read:

15 **"42-4-203. Duties of placing parent.** (1) A parent who is placing a child for adoption shall comply

16 with the provisions for executing a voluntary relinquishment and consent to adopt.

17 (2) A parent placing a child for adoption shall identify and provide information on the location of:

18 (a) any other legal parent or guardian of the child and any other person required to receive notice

19 under 42-2-605, including any current spouse; and

20 (b) any spouse who is the other birth parent and to whom the parent was married at the probable

21 time of conception or birth of the child.

22 (3) A parent placing a child for adoption shall identify and provide information pertaining to any

23 Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare

24 Act, 25 U.S.C. 1901, et seq., or [sections 1 through 20].

25 (4) A parent placing a child for adoption shall provide:

26 (a) the disclosures of medical and social history;

27 (b) a certified copy of the child's birth certificate or other document certifying the place and date of

28 the child's birth; and

(c) a certified copy of any existing court orders pertaining to custody or visitation of the child."

Section 48. Section 42-4-209, MCA, is amended to read:

"42-4-209. Postplacement department or agency evaluation. (1) The department or agency shall complete a written postplacement evaluation. The postplacement evaluation must be conducted according to the department's or agency's standards for placement of a child and at a minimum must include a personal interview with the prospective adoptive parent in that person's home and observation of the relationship between the child and the prospective adoptive parent.

(2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department or agency shall file the postplacement evaluation.

(3) The evaluation must include the following information:

(a) whether the child is legally free for adoption;

(b) whether the proposed home is suitable for the child;

(c) a statement that the medical and social histories of the birth parents and child have been provided to the prospective adoptive parent;

(d) an assessment of adaptation by the prospective adoptive parent to parenting the child;

(e) a statement that the 6-month postplacement evaluation period has been complied with or should be waived;

(f) any other circumstances and conditions that may have a bearing on the adoption and of which the court should have knowledge;

(g) whether the agency waives notice of the proceeding;

(h) a statement that any applicable provision of law governing an interstate or intercountry placement of the child has been complied with; and

(i) a statement of compliance with any applicable provisions of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20].

(4) The evaluation must contain a definite recommendation stating the reasons for or against the proposed adoption."

1 **Section 49.** Section 42-5-101, MCA, is amended to read:

2 **"42-5-101. Petition for adoption.** (1) A petition for adoption must be verified and must specify:

3 (a) the full names, ages, and place and duration of residence of the petitioners;

4 (b) the current marital status of petitioners and, if married, the place and date of the marriage;

5 (c) the circumstances under which the petitioners obtained physical custody of the child and the
6 name of the individual or agency that placed the child;

7 (d) the date and place of birth of the child, if known;

8 (e) the name used for the child in the proceeding and, if a change in name is desired, the full name
9 by which the child is to be known;

10 (f) that it is the desire of the petitioners that the relationship of parent and child be established
11 between the petitioners and the child and to have all the rights and be subject to all the duties of that
12 relationship;

13 (g) a full description and statement of value of all property owned or possessed by the child;

14 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the
15 adoption;

16 (i) that any applicable law governing interstate or intercountry placement was complied with;

17 (j) that, if applicable, the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., ~~was and~~
18 [sections 1 through 20] were complied with;

19 (k) whether a previous petition has been filed by the petitioners to adopt the child at issue or any
20 other child in any court and the disposition of the petitions; and

21 (l) the name and address, if known, of any person who is entitled to receive notice of the petition
22 for adoption.

23 (2) There must be attached to or accompanying the petition:

24 (a) any written consent required by 42-2-301;

25 (b) a certified copy of any court order terminating the rights of the child's parents;

26 (c) a certified copy of any existing court order in any pending proceeding concerning custody of or
27 visitation with the child;

28 (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child

- 1 with a special need;
- 2 (e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;
- 3 (f) a disclosure of any disbursements made in connection with the adoption proceeding.
- 4 (3) One copy of the petition must be retained by the court. A copy must be sent to:
- 5 (a) the department or to the agency participating in the adoption proceeding;
- 6 (b) the parent placing the child for adoption in a direct parental placement adoption; or
- 7 (c) the child's guardian ad litem if the child has one.
- 8 (4) Proceedings initiated under this part are subject to the Montana Rules of Civil Procedure
- 9 except as modified by this part."

10

11 **Section 50.** Section 42-5-107, MCA, is amended to read:

12 **"42-5-107. Best interests of child.** (1) In determining whether to grant a petition to adopt, the court

13 shall consider all relevant factors in determining the best interests of the child. The court shall consider factors

14 relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child,

15 and familial stability.

16 (2) In a contested adoption proceeding involving a child, the court shall consider the factors set out

17 in subsection (1) and shall also consider:

18 (a) the nature and length of any relationship already established between a child and any person

19 seeking to adopt the child;

20 (b) the nature of any family relationship between the child and any person seeking to adopt the

21 child and whether that person has established a positive emotional relationship with the child;

22 (c) the harm that could result to the child from a change in placement;

23 (d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

24 (e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or

25 the department or agency whose consent to the adoption is required.

26 (3) In an Indian child placement, the court shall determine if the requirements of the federal Indian

27 Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20] have been met."

28

1 **Section 51.** Section 47-1-104, MCA, is amended to read:

2 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at**
3 **public expense.** (1) There is a statewide public defender system, which is required to deliver public defender
4 services in all courts in this state. The system is supervised by the director.

5 (2) The director shall approve a strategic plan for service delivery and divide the state into not
6 more than 11 public defender regions. The director may establish a regional office to provide public defender
7 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in
8 the region, or utilize other service delivery methods as appropriate and consistent with the purposes described
9 in 47-1-102.

10 (3) When a court orders the assignment of a public defender, the appropriate office shall
11 immediately assign a public defender qualified to provide the required services. The director shall establish
12 protocols to ensure that the offices make appropriate assignments in a timely manner.

13 (4) A court may order assignment of a public defender under this chapter in the following cases:

14 (a) in cases in which a person is entitled to assistance of counsel at public expense because of
15 financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as
16 follows:

17 (i) for a person charged with a felony or charged with a misdemeanor for which there is a
18 possibility of incarceration, as provided in 46-8-101;

19 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as
20 provided in 40-6-119;

21 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
22 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian
23 Child Welfare Act and [section 11], as provided in 41-3-425;

24 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

25 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

26 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

27 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
28 disabled person to a residential facility, as provided in 53-20-112;

- 1 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided
2 in 53-21-116;
- 3 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
4 provided in 53-24-302; and
- 5 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.
- 6 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense
7 regardless of the person's financial ability to retain private counsel, as follows:
- 8 (i) as provided for in 41-3-425;
- 9 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent
10 or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction
11 Prosecution Act, as provided in 41-5-1607;
- 12 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on
13 Juveniles, as provided in 41-6-101;
- 14 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental
15 Consent for Abortion Act of 2013, as provided in 50-20-509;
- 16 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
17 person to a residential facility, as provided in 53-20-112;
- 18 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- 19 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in
20 a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;
- 21 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a
22 mental disorder of the ward, as provided in 72-5-322; and
- 23 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).
- 24 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
25 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
26 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.
- 27 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public
28 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad

1 item in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service
2 for the statewide public defender system and does not result in a conflict of interest."

3
4 **Section 52.** Section 52-2-117, MCA, is amended to read:

5 **"52-2-117. Indian child welfare specialist.** (1) The director of the department shall appoint a
6 qualified person to act as an Indian child welfare specialist.

7 (2) The duties of the specialist include:

8 (a) developing Indian foster homes and other Indian placement resources;

9 (b) providing technical advice to tribal, state, and county agencies and district courts on matters
10 pertaining to Indian child welfare;

11 (c) providing assistance in negotiating cooperative agreements to provide foster care services to
12 Indian children;

13 (d) conducting training seminars on implementing the federal Indian Child Welfare Act of 1978, {25
14 U.S.C. 1901, et seq.,} and [sections 1 through 20];

15 (e) applying for and accepting grants and other funds for Indian child welfare activities;

16 (f) developing and maintaining a list of attorneys to represent indigent parents and Indian
17 custodians in Indian child welfare proceedings;

18 (g) making recommendations to the department on legislation and rules concerning Indian child
19 welfare matters; and

20 (h) performing other duties concerning Indian child welfare matters as determined by the director."
21

22 NEW SECTION. **Section 53. Notification to tribal governments.** The secretary of state shall send a
23 copy of [this act] to each federally recognized tribal government in Montana.
24

25 NEW SECTION. **Section 54. Codification instruction.** [Sections 1 through 20] are intended to be
26 codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 1
27 through 20].
28

1 NEW SECTION. **Section 55. Effective dates.** (1) Except as provided in subsection (2), [this act] is
2 effective July 1, 2023.

3 (2) [Section 33] and this section are effective on passage and approval.

4 - END -

HOUSE BILL NO. 317

INTRODUCED BY J. WINDY BOY, M. WEATHERWAX, C. KEOGH, D. HAWK, E. KERR-CARPENTER, A.
BUCKLEY, K. SULLIVAN, K. KORTUM, T. FRANCE, E. STAFMAN, M. CAFERRO, M. THANE, F. SMITH, M.
FOX, S. MORIGEAU, J. ETCHART, K. ABBOTT, P. TUSS, S. STEWART PEREGOY, B. CARTER, Z.
ZEPHYR, M. ROMANO, L. SMITH, D. BAUM, E. MATTHEWS, S. HOWELL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA INDIAN CHILD WELFARE ACT;
PROVIDING REQUIREMENTS FOR DETERMINING INDIAN STATUS AND INDIAN TRIBE; ESTABLISHING
REQUIREMENTS FOR COURT PROCEEDINGS, EVIDENCE, AND CONSENT; PROVIDING DEFINITIONS;
AMENDING SECTIONS 40-6-405, 40-6-407, 40-6-413, 40-6-414, 40-6-1001, 40-7-135, 41-3-102, 41-3-103,
41-3-109, 41-3-128, 41-3-205, 41-3-301, 41-3-306, 41-3-307, 41-3-422, 41-3-423, 41-3-425, 41-3-427, 41-3-
432, 41-3-437, 41-3-444, 41-3-609, 42-2-102, 42-2-604, 42-4-102, 42-4-103, 42-4-203, 42-4-209, 42-5-101, 42-
5-107, 47-1-104, AND 52-2-117, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~20~~ 19] may be cited as the "Montana
Indian Child Welfare Act".

NEW SECTION. **Section 2. Legislative findings -- purpose.** (1) The legislature recognizes that in
possibly no other area of concurrent tribal and state law is it more important that tribal sovereignty be respected
than in an area as socially and culturally determinative as family relationships. The legislature finds that the
state is committed to protecting the essential tribal relations and best interests of Indian children by promoting
practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the
parents, the health, safety, or welfare of the child, or the interests of the child's tribe. Whenever out-of-home
placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian Child
Welfare Act and [sections 1 through ~~20~~ 19], the best interests of the Indian child may be served by placing the
Indian child in accordance with the placement priorities expressed in [sections 1 through ~~20~~ 19].

(2) The legislature further finds that when placement away from the parent or Indian custodian is necessary for the Indian child's safety, the state is committed to a placement that reflects and honors the unique values of the Indian child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.

(3) It is the intent of the legislature that [sections 1 through ~~20~~ 19] serve as a means of clarifying existing laws and codifying existing policies and practices.

(4) The legislature further intends that nothing in [sections 1 through ~~20~~ 19] interfere with policies and procedures that are derived from agreements entered into between the department and a tribe or tribes, as authorized by 25 U.S.C. 1919. The legislature finds that [sections 1 through ~~20~~ 19] specify the minimum requirements that must be applied in a child custody proceeding and do not prevent the department from providing a higher standard of protection to the rights of an Indian child, parent, Indian custodian, or Indian child's tribe.

(5) It is also the legislature's intent that any department policy manual covering Indian child welfare and any relevant local agreements between individual federally recognized tribes and the department should serve as persuasive guides in the interpretation and implementation of the federal Indian Child Welfare Act, [sections 1 through ~~20~~ 19], and other relevant state laws.

NEW SECTION. Section 3. Applicability. [Sections 1 through ~~20~~ 19] apply in all child custody proceedings. Whenever a child custody proceeding involves an Indian child and a conflict exists between [sections 1 through ~~20~~ 19] and Title 40, chapter 6, Title 41, chapter 3 or 4, or Title 42, the provisions of [sections 1 through ~~20~~ 19] apply.

NEW SECTION. Section 4. Definitions. As used in [sections 1 through ~~20~~ 19], the following definitions apply:

(1) "Active efforts" means affirmative, active, thorough, and timely efforts meeting the requirements of [section ~~14~~ 13] that are intended primarily to maintain or reunite an Indian child with the child's family and that are tailored to the facts and circumstances of the case.

(2) "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(3) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian Child Welfare Act, [sections 1 through ~~20~~ 19], and other applicable law that are designed to:

(a) protect the safety, well-being, development, and stability of the Indian child;

(b) prevent the unnecessary out-of-home placement of the Indian child;

(c) acknowledge the right of Indian tribes to maintain their existence and integrity in order to promote the stability and security of their children and families; and

(d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.

(4) (a) "Child custody proceeding" means any state or private proceeding, other than an emergency proceeding, that may culminate in a foster care placement, termination of parental rights, preadoptive placement, or adoptive placement.

(b) The term does not include a placement based on:

(i) an act that, if committed by an adult, would be considered a crime; or

(ii) an award, in a dissolution proceeding, of custody to one of the child's parents.

(5) "Court of competent jurisdiction" means a court that has jurisdiction over the relevant subject matter under federal, state, or tribal law.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Foster care placement" means an action removing an Indian child from the child's parent or Indian custodian for temporary placement in a foster home or institution or with a relative, guardian, conservator, or suitable other person under which the parent or Indian custodian may not have the child returned on demand but parental rights have not been terminated.

(8) "Indian" means a person who is a member of an Indian tribe or who is an Alaska Native and a member of a regional corporation as established in 43 U.S.C. 1606.

(9) "Indian child" means an unmarried Indian person who is under 18 years of age and who is:

(a) a member of an Indian tribe; or

1 (b) eligible for membership in an Indian tribe.

2 (10) (a) "Indian child's family" or "extended family member" means an individual defined by the law
3 or custom of the Indian child's tribe as a relative of the Indian child.

4 (b) If the Indian child's tribe does not identify family members by law or custom, the term means an
5 adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
6 nephew, cousin, stepparent, or stepgrandparent. A stepparent or stepgrandparent may be considered a family
7 member even following termination of the marriage.

8 (11) "Indian child's tribe" means a tribe or tribes in which an Indian child is a member or is
9 determined eligible for membership as provided in [section 6].

10 (12) "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law has
11 legal or temporary physical custody of an Indian child or to whom the parent has transferred temporary care,
12 physical custody, and control of the Indian child.

13 (13) (a) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or
14 community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior
15 because of their status as Indians.

16 (b) The term includes an Alaska Native village as defined in 43 U.S.C. 1602.

17 (14) "Member" or "membership" means a determination by an Indian tribe that an individual is a
18 member of or eligible for membership in that Indian tribe.

19 (15) (a) "Parent" means a biological parent of an Indian child or an individual who has lawfully
20 adopted an Indian child, including adoptions made as tribal customary adoptions.

21 (b) The term does not include an unwed father whose paternity has not been acknowledged or
22 established under Title 40, chapter 6, part 1, or the applicable laws of another state.

23 (16) "Preadoptive placement" means the temporary placement of an Indian child in a foster home or
24 institution after the termination of parental rights but before or in lieu of adoptive placement.

25 (17) "Qualified expert witness" means a person who meets the provisions of [section ~~13~~ 12].

26 (18) "Termination of parental rights" means any action resulting in the termination of the parent-child
27 relationship.

28 (19) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child

1 custody proceedings. The term includes but is not limited to a federal court of Indian offenses, a court
2 established and operated under the code or custom of an Indian tribe, and an administrative body of an Indian
3 tribe vested with authority over child custody proceedings.

4 (20) (a) "Tribal customary adoption" means adoption or another process through the tribal custom,
5 traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and
6 through which the nonparent is vested with the rights, privileges, and obligations of a legal parent.

7 (b) Termination of the parent-child relationship between the Indian child and the biological parent
8 is not required to recognize a tribal customary adoption.

9
10 **NEW SECTION. Section 5. Determination of Indian status -- confidentiality of records.** (1) (a) A
11 party seeking the foster care placement of, termination of parental rights over, or adoption of a child shall use
12 due diligence to determine whether the child is an Indian child. The inquiry must be made in consultation with:

13 (i) the child's parent or parents;
14 (ii) an individual who has custody of the child or with whom the child resides;
15 (iii) any other individual who reasonably may be expected to have information regarding the child's
16 possible membership or eligibility for membership in an Indian tribe; and

17 (iv) any Indian tribe of which the child may be a member or may be eligible for membership. The
18 consultation with a tribe must be made by contacting the tribe in writing.

19 (b) The inquiries required under this subsection (1) must be documented in the record.

20 (2) Preliminary contacts for the purpose of using due diligence to determine a child's possible
21 Indian status do not constitute legal notice as required by [section 8].

22 (3) A court shall ask each participant in an emergency proceeding or voluntary or involuntary child
23 custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The
24 inquiry must be made at the commencement of the proceeding and all responses must be on the record. The
25 court shall instruct the parties to inform the court if they subsequently receive information that provides reason
26 to know the child is an Indian child.

27 (4) If there is reason to know the child is an Indian child but the court does not have sufficient
28 evidence to determine that the child is or is not an Indian child, the court shall:

(a) confirm, by way of a report, declaration, or testimony included in the record, that the department or other party used due diligence to identify and work with all tribes of which there is reason to know the child may be a member or eligible for membership to verify whether the child is a member or eligible for membership; and

(b) treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an Indian child.

(5) A court, on conducting the inquiry required in subsection (3), has reason to know that a child involved in an emergency proceeding or child custody proceeding may be an Indian child if:

(a) any participant in the proceeding, officer of the court involved in the proceeding, Indian tribe, Indian organization, or agency informs the court that:

(i) the child is an Indian child; or

(ii) it has discovered information indicating that the child is an Indian child;

(b) the child who is the subject of the proceeding gives the court reason to know the child is an Indian child;

(c) the court is informed that the residence or domicile of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(d) the court is informed that the child is or has been a ward of a tribal court;

(e) the court is informed that either of the parents or the child possesses an identification card indicating membership in an Indian tribe; or

(f) the court determines from additional information provided that the child may be an Indian child.

(6) (a) When seeking verification of a child's Indian status during a voluntary proceeding, the court shall keep relevant documents pertaining to the inquiry confidential and under seal if a consenting parent expresses either orally or in writing a desire for anonymity. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with [sections 1 through ~~20~~ 19], including the obligation to verify whether the child is an Indian child.

(b) A tribe receiving information related to an inquiry of a child's status as an Indian child must keep documents and information confidential.

(7) (a) A written determination by an Indian tribe regarding the child's status as an Indian child is

1 conclusive that the child is an Indian child.

2 (b) If a tribe provides no response to the department's written request for verification of the child's
3 membership status, the nonresponse does not constitute evidence that the child is not a member of or eligible
4 for membership in the tribe.

5 (8) If a child has been determined not to be an Indian child, any party to the proceeding or an
6 Indian tribe that subsequently determines the child is a member or is eligible for membership may move, during
7 the pendency of a child custody proceeding to which the federal Indian Child Welfare Act or [sections 1 through
8 ~~20~~ 19] applies, for redetermination of the child's Indian status based on:

9 (a) new evidence;

10 (b) a redetermination by the child's tribe;

11 (c) newly conferred federal recognition of the tribe; or

12 (d) a prior mistaken determination on the part of the tribe.

13
14 NEW SECTION. Section 6. Determination of Indian tribe. (1) If the Indian child is a member of or
15 eligible for membership in only one tribe, that tribe must be designated as the Indian child's tribe.

16 (2) If the Indian child meets the definition of Indian child through more than one tribe, deference
17 must be given to the tribe in which the Indian child is already a member, unless otherwise agreed to by the
18 tribes.

19 (3) (a) If the Indian child meets the definition of Indian child through more than one tribe because
20 the child is a member in more than one tribe or the child is not a member of but is eligible for membership in
21 more than one tribe, the court shall provide the opportunity in any involuntary child custody proceeding for the
22 tribes to determine which tribe should be designated as the Indian child's tribe.

23 (b) If the tribes are able to reach an agreement, the court shall designate the agreed-on tribe as
24 the Indian child's tribe.

25 (c) If the tribes are unable to reach an agreement, for the purposes of [sections 1 through ~~20~~ 19]
26 the court shall designate as the child's tribe the tribe with which the child has the more significant contacts as
27 the Indian child's tribe. In making the designation, the court shall consider:

28 (i) the preference of the parents for membership of the child;

- 1 (ii) the length of the child's past residence or domicile on or near the reservation of each tribe;
- 2 (iii) the tribal membership of the child's custodial parent or Indian custodian;
- 3 (iv) the interest asserted by each tribe in the child custody proceeding;
- 4 (v) whether there has been a previous adjudication with respect to the child by a court of one of
- 5 the tribes; and
- 6 (vi) self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-
- 7 identify with a tribe.

8 (4) A determination of the Indian child's tribe for the purposes of [sections 1 through ~~20~~ 19] does
9 not constitute a determination for any other purpose.

10
11 **NEW SECTION. Section 7. Jurisdiction -- transfer of jurisdiction.** (1) An Indian tribe has exclusive
12 jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the
13 reservation of that tribe unless:

14 (a) the tribe has consented to the state's concurrent jurisdiction PURSUANT TO PUBLIC LAW 280 OR
15 25 U.S.C. 1919;

16 (b) the tribe has expressly declined to exercise its exclusive jurisdiction; or

17 (c) the state is exercising emergency jurisdiction in compliance with [section ~~16~~ 15].

18 (2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding,
19 the Indian tribe may retain exclusive jurisdiction regardless of the residence or domicile of the child.

20 (3) Except as provided in subsections (4) and (6), in a child custody proceeding involving an Indian
21 child who is not residing or domiciled within the reservation of the Indian child's tribe, the court shall, in the
22 absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe on
23 the motion of any of the following:

24 (a) either of the Indian child's parents;

25 (b) the Indian child's Indian custodian;

26 (c) the Indian child's tribe; or

27 (d) the Indian child if the child is 12 years of age or older.

28 (4) A tribe to which jurisdiction is being transferred shall respond within 75 days to a motion or

order transferring jurisdiction to the tribal court. A failure of the tribe to respond within 75 days must be construed as a declination to accept the transfer of the case.

(5) If the Indian child's tribe has not formally intervened, the moving party shall serve a copy of the motion and all supporting documents on the tribal court to which the moving party seeks transfer.

(6) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court may not transfer the proceeding.

(7) (a) If a state court believes or any party asserts that good cause to deny transfer exists, the reasons for that belief or assertion must be provided orally or in writing on the record and to the parties to the child custody proceeding. Any party to the child custody proceeding must have the opportunity to provide the court with the reasons that good cause exists to deny transfer of the proceeding.

(b) In determining whether good cause exists, the court may not consider:

(i) whether the child custody proceeding is at an advanced stage;

(ii) whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(iii) whether transfer could affect the placement of the child;

(iv) the child's cultural connections with the tribe or its reservation; or

(v) socioeconomic conditions or any negative perception of the tribal or bureau of Indian affairs social services or judicial systems.

(c) If the court denies transfer of jurisdiction, the court shall state its reasons for the denial orally on the record or in a written order.

(8) (a) Following entry of an order transferring jurisdiction to the Indian child's tribe and pending receipt of a tribal court order accepting jurisdiction, the state court:

(i) may conduct additional hearings and enter orders that are in the best interests of the child and strictly comply with the requirements of the federal Indian Child Welfare Act and [sections 1 through ~~20~~ 19]; and

(ii) may not enter a final order in a child custody proceeding, except an order dismissing the proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the child was removed.

(b) On receipt of an order from a tribal court accepting jurisdiction, the court shall:

1 (i) dismiss the child custody proceeding with prejudice; and
2 (ii) expeditiously provide the tribal court with all records related to the proceeding, including but not
3 limited to the pleadings and any court record. The state court shall work with the tribal court to ensure the
4 transfer of the custody of the Indian child and the proceeding is accomplished smoothly and in a way that
5 minimizes the disruption of services to the family.

6 (9) If the Indian child's tribe accepts jurisdiction, the state court shall enter an order relieving the
7 office of the state public defender and any public defender assigned pursuant to 41-3-425 and 47-1-104 from
8 further representation.

9 (10) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the
10 order transferring jurisdiction and proceed with adjudication of the child custody proceeding in compliance with
11 the federal Indian Child Welfare Act, [sections 1 through ~~20~~ 19], and any applicable state-tribal agreement.
12

13 **NEW SECTION. Section 8. Notice.** (1) The petitioning party shall provide notice of the initial petition
14 filed in an involuntary child custody proceeding and a petition seeking termination of parental rights when the
15 petitioning party knows or has reason to know that the child is or may be an Indian child. Notice must be
16 provided as required in subsection (2) to:

17 (a) the Indian child's parent or Indian custodian; and

18 (b) the child's tribe or tribes.

19 (2) (a) Notice to the tribe must be made by certified mail, return receipt requested, and must meet
20 the requirements of subsection (4). The notice must be sent to the person designated in the most current
21 Federal Register as the designated tribal agent for service of notice for the purposes of the federal Indian Child
22 Welfare Act. The petitioning party shall file the return receipt with the court as proof of notice.

23 (b) Notice to the parent or Indian custodian must be made by personal service, or alternative
24 means as provided in 41-3-422 if personal service cannot be accomplished, and must meet the requirements of
25 subsection (4).

26 (c) If the identity or location of the parent or Indian custodian and the tribe cannot be determined,
27 the notice must be given to the secretary of the U.S. department of the interior by certified mail, return receipt
28 requested, in accordance with the provisions of 25 CFR, part 23.

(d) Service of all other petitions, other than the initial petition and a petition for termination of parental rights, must be served on the tribe by first-class mail unless otherwise directed by the tribe's designated agent for notice.

(e) When notice of the initial petition and a petition for termination of parental rights to the parent or Indian custodian is required under this subsection (2), personal service, and alternative means of personal service when personal service cannot be accomplished, as provided in 41-3-422, takes the place of certified mail with return receipt requested.

(3) A foster care placement or a termination of parental rights proceeding may not be held until at least 10 days after receipt of the notice by the parent or Indian custodian, the tribe, and, if applicable, the secretary. The parent, Indian custodian, or tribe shall, on request, be granted up to 20 additional days to prepare for the proceeding. The 10-day notice requirement does not limit a court's ability to hold an emergency protective services hearing pursuant to 41-3-306.

(4) Notice provided under this section must be in clear and understandable language and include the following:

(a) the child's name, date of birth, and place of birth;

(b) all known names of the child's parents, including maiden, married, and former names or aliases;

(c) the parents' dates of birth, places of birth, and tribal enrollment numbers, if known;

(d) the names, dates of birth, places of birth, and tribal enrollment information of other direct lineal ancestors of the child, if known;

(e) the name of each Indian tribe in which the child is a member or may be eligible for membership if a biological parent is a member; and

(f) a copy of the petition, complaint, or other document by which the child custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing.

~~NEW SECTION. Section 9. — Tribal participation in proceedings — intervention. (1) A state court shall allow a designated tribal representative to represent a tribe in all proceedings under [sections 1 through 20], in person or by electronic means. The court may not require that the tribal representative be an attorney or~~

that the person be licensed in Montana if the person is an attorney.

(2) — An attorney may appear in a proceeding involving an Indian child under [sections 1 through 20] without complying with any rule of the Montana supreme court regarding admission to practice in the state or paying the associated fees or assessments related to admission to practice if the attorney is:

(a) — permitted to practice in another state, tribe, or territory of the United States or District of Columbia; and

(b) — in good standing with the bar association of that state, tribe, or territory.

(3) — The Indian child's tribe or tribes may file as an intervenor at any point in a child custody proceeding involving the Indian child.

NEW SECTION. Section 9. Full faith and credit. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe that are applicable to Indian child custody proceedings.

NEW SECTION. Section 10. Right to counsel. In a child custody proceeding under [sections 1 through 20 ~~19~~] in which the court determines that the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian has the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child pursuant to 41-3-425.

NEW SECTION. Section 11. Right of access to evidence. Each party to a child custody proceeding involving an Indian child has the right to examine all reports or other documents filed with the court on which any decision with respect to the proceeding may be based.

NEW SECTION. Section 12. Qualified expert witness -- requirements -- prohibitions. (1) A qualified expert witness is an individual who provides testimony in a child custody proceeding under [sections 1 through 20 ~~19~~]. The purpose of the testimony is to assist a court in determining whether the continued custody of the child by or the return of the child to the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The parties may not waive the requirement for qualified expert witness testimony.

(2) The petitioning party shall consult with the Indian child's tribe on the selection of the qualified expert witness, including asking whether the tribe has a list of preferred qualified expert witnesses. To the extent possible, the petitioning party shall use an individual preferred by the tribe.

(3) A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and must be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe.

(4) (a) If the petitioner is the department, the child protection specialist assigned to the case and the child protection specialist's supervisor may not testify as qualified expert witnesses in the case.

(b) Nothing in this subsection (4) may be construed as barring:

(i) the child protection specialist or the child protection specialist's supervisor from testifying as an expert witness for other purposes in a proceeding under [sections 1 through ~~20~~ 19]; or

(ii) the petitioner or another party in a proceeding under [sections 1 through ~~20~~ 19] from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court, including the determination of whether the continued custody of the Indian child by or return of the Indian child to the parent, parents, or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

NEW SECTION. Section 13. Active efforts. (1) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that the efforts have proven unsuccessful.

(2) The court shall make written findings that the petitioning party has provided active efforts and the efforts must be documented in detail in the record.

(3) If the department is involved in the child custody proceeding, active efforts must include assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.

(4) (a) To the maximum extent possible, active efforts must be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and conducted in

1 partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians,
2 and tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include but are
3 not limited to:

- 4 (i) conducting a comprehensive assessment of the circumstances of the Indian child's family, with
5 a focus on safe reunification as the most desirable goal;
- 6 (ii) identifying appropriate services and helping the parents to overcome barriers, including actively
7 assisting the parents in obtaining the services;
- 8 (iii) identifying, notifying, and inviting representatives of the Indian child's tribe to participate in
9 providing support and services to the Indian child's family and in family team meetings, permanency planning,
10 and resolution of placement issues;
- 11 (iv) conducting or causing to be conducted a diligent search for the Indian child's extended family
12 members and contacting and consulting with extended family members to provide family structure and support
13 for the Indian child and the Indian child's parents;
- 14 (v) offering and employing all available and culturally appropriate family preservation strategies
15 and facilitating the use of remedial and rehabilitative services provided by the child's tribe;
- 16 (vi) taking steps to keep siblings together whenever possible;
- 17 (vii) supporting regular visits with parents or Indian custodians in the most natural setting possible
18 as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure
19 the health, safety, and welfare of the child;
- 20 (viii) identifying community resources, including housing, financial, transportation, mental health,
21 substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the
22 child's family, in accessing and using the resources;
- 23 (ix) monitoring progress and participation in services;
- 24 (x) considering alternative ways to address the needs of the Indian child's parents and, when
25 appropriate, the family, if the optimum services do not exist or are not available; and
- 26 (xi) providing postreunification services and monitoring.

27 (b) Referral to a service or program does not constitute an active effort if the referral was the sole
28 action taken.

1

2 NEW SECTION. Section 14. Evidentiary requirements. (1) A court may not order a foster care
3 placement of an Indian child unless:

4 (a) the petitioning party has provided clear and convincing evidence that active efforts were made
5 to provide remedial services and rehabilitative programs to prevent the breakup of an Indian family and that the
6 efforts were unsuccessful; and

7 (b) clear and convincing evidence is presented, including the testimony of one or more qualified
8 expert witnesses, to demonstrate that continued custody by the child's parent or Indian custodian is likely to
9 result in serious emotional or physical damage to the child.

10 (2) The court may not terminate parental rights of the parents of an Indian child unless evidence
11 beyond a reasonable doubt is presented that:

12 (a) active efforts were made to prevent the breakup of the Indian family and the efforts were
13 unsuccessful; and

14 (b) continued custody of the child by the child's parent or Indian custodian is likely to result in
15 serious emotional or physical damage to the child. The evidence must include testimony of one or more
16 qualified expert witnesses.

17 (3) For the purposes of this section, any harm that may result from interfering with the bond or
18 attachment that may have formed between the child and a foster care provider may not be the sole basis or
19 primary reason for continuing a foster care placement or terminating the parental rights of a parent of an Indian
20 child.

21 (4) (a) Evidence required under this section must show a causal relationship between the specific
22 conditions in the home and the likelihood that continued custody of the child will result in serious emotional or
23 physical damage to the child who is the subject of the child custody proceeding.

24 (b) Evidence showing only the existence of community or family poverty, isolation, single
25 parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social
26 behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt
27 that continued custody is likely to result in serious emotional or physical damage to the child.

28

NEW SECTION. Section 15. Emergency removal of Indian child. (1) Nothing in [sections 1 through 20 19] may be construed to prevent the department from removing an Indian child from the Indian child's parent or Indian custodian or prevent the emergency placement of the Indian child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the Indian child.

(2) An emergency removal or placement of an Indian child under state law must terminate immediately when the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(3) A state court shall:

(a) make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

(b) promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended;

(c) at any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child; and

(d) immediately terminate or direct the department to terminate the emergency removal if the court or department possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(4) An emergency proceeding may be terminated by any of the following actions:

(a) initiation of a child custody proceeding subject to the provisions of the federal Indian Child Welfare Act and [sections 1 through 20 19];

(b) transfer of the child to the jurisdiction of the appropriate Indian tribe; or

(c) restoring the child to the parent or Indian custodian.

(5) A petition for a court order authorizing the emergency removal or placement, or its accompanying documents, must contain a statement of the risk of imminent physical damage or harm to the Indian child, any evidence that the emergency removal or placement continues to be necessary to prevent the damage or harm, and if available:

(a) the full name, age, and last known address of the Indian child;

(b) the name and address of the child's parents and Indian custodians, if any;

(c) the steps taken to provide notice to the child's parents, Indian custodians, and tribe about the emergency proceeding;

(d) if the child's parents and Indian custodians are unknown, a detailed explanation of the efforts made to locate and contact the individuals, including contact with the appropriate bureau of Indian affairs regional director;

(e) the residence or the domicile of the Indian child;

(f) if either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the tribe affiliated with that reservation or village;

(g) the tribal affiliation of the child and of the parents or Indian custodians;

(h) a specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to remove the child;

(i) if the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of the efforts made and being made to contact the tribe and transfer the child to the tribe's jurisdiction; and

(j) a statement of the efforts made to assist the parents or Indian custodians so the Indian child may be safely returned to the parents or Indian custodians.

(6) Contact made to provide notice of an emergency removal and reported pursuant to subsection (5)(c) does not constitute the notice required under [section 8] for the purposes of subsequent dependency, termination of parental rights, or adoption proceedings.

(7) An emergency proceeding regarding an Indian child may not be continued for more than 30 days unless the court determines that:

(a) restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;

(b) the court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and

(c) it has not been possible to initiate a child custody proceeding.

NEW SECTION. Section 16. Consent. (1) At an involuntary foster care placement hearing, a

1 stipulation or consent by the parent or Indian custodian is not valid unless the court certifies on the record that
2 the terms and consequences of the stipulation or consent were fully explained in detail and were fully
3 understood by the parent or Indian custodian. The court shall certify on the record that the parent or Indian
4 custodian fully understood the explanation in English or that the explanation was translated into a language that
5 the parent or Indian custodian understood.

6 (2) In a voluntary proceeding for foster care placement or termination of parental rights, consent by
7 a parent or Indian custodian is not valid unless the consent is:

8 (a) executed in writing and recorded before a judge of a court of competent jurisdiction; and

9 (b) accompanied by the judge's written certificate that:

10 (i) the terms and consequences of the consent were fully explained in detail and were fully
11 understood by the parent or Indian custodian; and

12 (ii) the parent or Indian custodian fully understood the explanation in English or that the
13 explanation was translated into a language that the parent or Indian custodian understood.

14 (3) Voluntary consent for release of custody given prior to or within 10 days after the birth of an
15 Indian child may not be considered valid.

16 (4) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care
17 placement at any time. On withdrawal of consent, the Indian child must be returned to the parent or Indian
18 custodian.

19 (5) In a voluntary proceeding for termination of parental rights to or adoptive placement of an
20 Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an
21 order terminating parental rights or a final decree of adoption, and the Indian child must be returned to the
22 parent.

23 (6) (a) After the entry of a final decree of adoption of an Indian child, the parent may withdraw
24 consent to the adoption on the grounds that consent was obtained through fraud or duress. On a finding that
25 consent was obtained through fraud or duress, the court shall vacate the decree and return the Indian child to
26 the parent.

27 (b) An adoption that has been effective for at least 2 years may not be invalidated under this
28 section unless otherwise allowed by law.

1

2 **NEW SECTION. Section 17. Improper removal of Indian child.** If a petitioner in a child custody
3 proceeding under [sections 1 through ~~20~~ 19] has improperly removed an Indian child from the custody of the
4 parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of
5 custody, the court shall decline jurisdiction over the petition and shall immediately return the Indian child to the
6 parent or Indian custodian unless returning the Indian child to the parent or Indian custodian would subject the
7 Indian child to substantial and immediate danger or threat of substantial or immediate danger.

8

9 **NEW SECTION. Section 18. Removal of Indian child from adoptive or foster care placement.** (1)
10 If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily
11 consent to the termination of their parental rights to the Indian child, the biological parent or prior Indian
12 custodian may petition to have the Indian child returned to the custody of the parent or Indian custodian. The
13 court shall grant the request unless there is a showing by clear and convincing evidence that return of custody
14 to the biological parent or Indian custodian is not in the best interests of the child.

15 (2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home
16 for the purposes of further foster care or a preadoptive or adoptive placement, the placement must be made in
17 accordance with [sections 1 through ~~20~~ 19] unless an Indian child is being returned to the parent or Indian
18 custodian from whose custody the child was originally removed.

19

20 **NEW SECTION. Section 19. Placement preferences.** (1) When an emergency removal, foster care
21 placement, or preadoptive placement of an Indian child is necessary, the petitioning party shall, in the absence
22 of good cause to the contrary, place the Indian child in the least restrictive setting that:

- 23 (a) most closely approximates a family situation;
24 (b) is in reasonable proximity to the Indian child's home; and
25 (c) allows for the Indian child's special needs, if any, to be met.

26 (2) In a foster care or preadoptive placement, preference must be given, in the absence of good
27 cause to the contrary, to the Indian child's placement with one of the following, in descending order of priority:

- 28 (a) an Indian child's extended family member;

- 1 (b) a foster home licensed, approved, or specified by the Indian child's tribe;
- 2 (c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- 3 (d) an institution for children approved by an Indian tribe or operated by an Indian organization that
- 4 has a program suitable to meet the Indian child's needs.
- 5 (3) In the absence of good cause to the contrary, in an adoptive or other permanent placement of
- 6 an Indian child, preference must be given to a placement with one of the following, in descending order of
- 7 priority:
- 8 (a) extended family members;
- 9 (b) an Indian family of the same tribe as the Indian child;
- 10 (c) an Indian family that is of a similar culture to the Indian child's tribe; or
- 11 (d) another Indian family.
- 12 (4) Notwithstanding the placement preferences listed in subsections (2) and (3), if a different order
- 13 of placement preference is established by the Indian child's tribe, the court or agency implementing the
- 14 placement shall follow the order of preference established by the tribe if the placement is in the least restrictive
- 15 setting appropriate to the particular needs of the Indian child and within reasonable proximity to the child's
- 16 home.
- 17 (5) When appropriate, the preference of the Indian child or the child's parent must be considered
- 18 by the court.
- 19 (6) The standards to be applied in meeting the preference requirements of this section must be the
- 20 prevailing social and cultural standards of the Indian community in which the parent or extended family
- 21 members of an Indian child reside or with which the parent or extended family members maintain social and
- 22 cultural ties.
- 23 (7) Nothing in this section prevents the department or the court from placing an Indian child with a
- 24 parent to effectuate a permanency plan regardless of the parent's relationship to the Indian child's tribe.
- 25 (8) (a) If any party asserts that good cause to not follow the placement preferences exists, the
- 26 reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the
- 27 child custody proceeding and the court.
- 28 (b) The party seeking departure from the placement preferences bears the burden of proving by

clear and convincing evidence that there is good cause to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:

(i) the request of one or both of the Indian child's parents on attestation that they have reviewed the placement options, if any, that comply with the order of preference provided for in subsections (2) and (3);

(ii) the request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

(iii) the presence of a sibling attachment that can be maintained only through a particular placement;

(iv) the extraordinary physical, mental, or emotional needs of the Indian child, including but not limited to specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; or

(v) the unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but no suitable placement was found. For the purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) A placement may not depart from the preferences based:

(i) on the socioeconomic status of any placement relative to another placement; or

(ii) solely on ordinary bonding or attachment.

Section 20. Section 40-6-405, MCA, is amended to read:

"40-6-405. Surrender of newborn to emergency services provider -- temporary protective custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the

1 physical health and safety of the newborn.

2 (2) The emergency services provider shall make a reasonable effort to do all of the following:

3 (a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the
4 newborn to the department to be placed for adoption according to law;

5 (b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody
6 of the newborn;

7 (c) if possible, ascertain whether the newborn has a tribal affiliation and, if so, ascertain relevant
8 information pertaining to any Indian heritage of the newborn;

9 (d) provide the parent with written material approved by or produced by the department, which
10 includes but is not limited to all of the following statements:

11 (i) by surrendering the newborn, the parent is releasing the newborn to the department to be
12 placed for adoption and the department shall initiate court proceedings according to law to place the newborn
13 for adoption, including proceedings to terminate parental rights;

14 (ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of
15 the newborn;

16 (iii) the parent may not receive personal notice of the court proceedings begun by the department;

17 (iv) information that the parent provides to an emergency services provider will not be made public;

18 (v) a parent may contact the department for more information and counseling; and

19 (vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the federal
20 Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20 19].

21 (3) After providing a parent with the information described in subsection (1), if possible, an
22 emergency services provider shall make a reasonable effort to:

23 (a) encourage the parent to provide any relevant family or medical information, including
24 information regarding any tribal affiliation;

25 (b) provide the parent with information that the parent may receive counseling or medical attention;

26 (c) inform the parent that information that the parent provides will not be made public;

27 (d) ask the parent for the parent's name;

28 (e) inform the parent that in order to place the newborn for adoption, the state is required to make

1 a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the
2 parent to identify the other parent;

3 (f) inform the parent that the department can provide confidential services to the parent; and

4 (g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a
5 hearing to terminate parental rights."

6
7 **Section 21.** Section 40-6-407, MCA, is amended to read:

8 **"40-6-407. Assumption of care, custody, and control by department -- placement of child --**
9 **presumptions -- Montana birth certificate.** (1) Upon receipt of notice under 40-6-406, the department shall:

10 (a) immediately assume the care, control, and temporary protective custody of the newborn;

11 (b) if a parent is known and willing, immediately meet with the parent;

12 (c) make a temporary placement of the newborn;

13 (d) immediately request assistance from law enforcement officials to investigate and determine,
14 through the national center for missing and exploited children and any other national and state missing children
15 information programs, whether the newborn is a missing child;

16 (e) not later than 48 hours after assuming the care, control, and temporary protective custody of
17 the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, and, if applicable,
18 [sections 1 through 20 19], requesting appropriate relief with the goal of achieving permanent placement for the
19 newborn at the earliest possible date; and

20 (f) within 30 days, make reasonable efforts to identify and locate a parent who did not surrender
21 the newborn. If the identity and address of that parent are unknown, the department shall provide notice by
22 publication in a newspaper of general circulation in the county where the newborn was surrendered.

23 (2) The department, after assuming the care, custody, and control of a newborn under subsection
24 (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not required
25 to search for relatives of the newborn as a placement or permanency option or to implement other placement
26 requirements that give preference to relatives if the department does not have information as to the identity of
27 the newborn or either of the newborn's parents. The department shall place the newborn with prospective
28 adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding

1 the newborn's medical history, date of birth, or age if the department has that information.

2 (3) A newborn surrendered under 40-6-405 is presumed to have been born in Montana unless the
3 biological parent otherwise informs the department or the emergency services provider to whom the newborn is
4 surrendered.

5 (4) A Montana birth certificate may be issued based on the presumption of birth in Montana as
6 provided in subsection (3). A birth certificate issued to a newborn surrendered under 40-6-405 must provide a
7 date of birth based on either the actual date of birth, if known, or on the date of birth determined by the
8 physician who performs the medical examination of the newborn under 40-6-406."

9

10 **Section 22.** Section 40-6-413, MCA, is amended to read:

11 **"40-6-413. Custody action -- order.** Based on the court's finding of the newborn's best interest under
12 40-6-412, the court may issue an order:

13 (1) granting legal or physical custody, or both, of the newborn to the parent and either retaining or
14 relinquishing jurisdiction; or

15 (2) denying custody of the newborn to the parent and referring the matter to the department or
16 county attorney for proceedings under Title 41, chapter 3, and, if applicable, [sections 1 through 20 19]."

17

18 **Section 23.** Section 40-6-414, MCA, is amended to read:

19 **"40-6-414. Presumption of waiver of parental rights -- department to file petition.** (1) A-Except as
20 provided in [section 17 16], a parent who surrenders a newborn under 40-6-405 and who does not file a
21 custody action under 40-6-411 is presumed to have knowingly waived the parent's parental rights to the
22 newborn.

23 (2) If a custody action is not filed under 40-6-411 or if the parent is denied custody of the newborn
24 under 40-6-413, the department shall file a petition under Title 41, chapter 3, part 4, or, if applicable, [sections 1
25 through 20 19], requesting appropriate relief with the goal of achieving permanent placement for the newborn at
26 the earliest possible date."

27

28 **Section 24.** Section 40-6-1001, MCA, is amended to read:

1 **"40-6-1001. Petition for termination -- criteria -- process.** (1) A district court may order a
2 termination of the parent-child legal relationship after the filing of a petition pursuant to this section alleging the
3 factual grounds for termination as provided for in subsection (2).
4 (2) Grounds for termination pursuant to this section exist when the parent of a child:
5 (a) is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a
6 delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse
7 occurred and, as a result of the sexual intercourse, the child is born; or
8 (b) at a fact-finding hearing is found by clear and convincing evidence, except as provided in the
9 federal Indian Child Welfare Act and [sections 1 through 20 19], if applicable, to have committed an act of
10 sexual intercourse without consent, sexual assault, or incest that caused the child to be conceived.
11 (3) The court's order must state the reasons for the decision.
12 (4) The victim of the crime or act may file a petition pursuant to this section. If the victim is a minor,
13 the victim's parent or guardian may file a petition on the victim's behalf.
14 (5) The respondent to the petition has the right to counsel in all proceedings held pursuant to the
15 petition.
16 (6) Before termination of the parent-child legal relationship may be ordered, the court shall
17 determine whether the provisions of 40-6-1002 and 40-6-1003 have been followed.
18 (7) There is no right to a jury trial at proceedings held to consider the termination of a parent-child
19 legal relationship.
20 (8) (a) An order for the termination of the parent-child legal relationship divests the child and the
21 parent of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in
22 Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except:
23 (i) the right of the child to inherit from the parent; and
24 (ii) that nothing in this section may be construed to relieve the parent whose rights are terminated
25 as provided in this part of any child support obligations as provided in Title 40, chapters 4 and 5.
26 (b) An order or decree entered pursuant to this part may not disentitle a child to any benefit due to
27 the child from a third person, including but not limited to an Indian tribe, an agency, a state, or the United
28 States."

1

2 **Section 25.** Section 40-7-135, MCA, is amended to read:

3 **"40-7-135. Application to Indian tribes.** (1) A child custody proceeding that pertains to an Indian
4 child as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4] is not subject to
5 this chapter to the extent that it is governed by the federal Indian Child Welfare Act or [sections 1 through 20
6 19].

7 (2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of
8 applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, 40-7-134 through 40-
9 7-140, and part 2 of this chapter.

10 (3) A child custody determination made by a tribe under factual circumstances in substantial
11 conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this
12 chapter."

13

14 **Section 26.** Section 41-3-102, MCA, is amended to read:

15 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

16 (1) (a) "Abandon", "abandoned", and "abandonment" mean:

17 (i) leaving a child under circumstances that make reasonable the belief that the parent does not
18 intend to resume care of the child in the future;

19 (ii) willfully surrendering physical custody for a period of 6 months and during that period not
20 manifesting to the child and the person having physical custody of the child a firm intention to resume physical
21 custody or to make permanent legal arrangements for the care of the child;

22 (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable
23 efforts to identify and locate the parent have failed; or

24 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than
25 30 days old to an emergency services provider, as defined in 40-6-402.

26 (b) The terms do not include the voluntary surrender of a child to the department solely because of
27 parental inability to access publicly funded services.

28 (2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare;

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an

unlawful clandestine laboratory, as prohibited by 45-9-132; or

(C) any form of child sex trafficking or human trafficking.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act ~~is or~~ [sections 1 through 20 19] are applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Child protection specialist" means an employee of the department who investigates allegations of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

(9) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(10) "Department" means the department of public health and human services provided for in 2-15-2201.

(11) "Family engagement meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

~~(12) "Indian child" means any unmarried person who is under 18 years of age and who is either:~~

~~(a) a member of an Indian tribe; or~~

~~(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe~~
has the meaning provided in [section 4].

~~(13) "Indian child's tribe" means:~~

~~(a) the Indian tribe in which an Indian child is a member or eligible for membership; or~~

~~(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts~~
has the meaning provided in [section 4].

~~(14) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been~~

1 ~~transferred by the child's parent~~ has the meaning provided in [section 4].

2 (15) "Indian tribe" ~~means any Indian tribe, band, nation, or other organized group or community of~~
3 ~~Indians recognized by:~~

4 ~~(a) the state of Montana; or~~

5 ~~(b) the United States secretary of the interior as being eligible for the services provided to Indians or~~
6 ~~because of the group's status as Indians, including any Alaskan native village as defined in federal law~~ has the
7 meaning provided in [section 4].

8 (16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-
9 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person
10 who is 18 years of age or older.

11 (17) "Parent" means a biological or adoptive parent or stepparent.

12 (18) "Parent-child legal relationship" means the legal relationship that exists between a child and the
13 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
14 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

15 (19) "Permanent placement" means reunification of the child with the child's parent, adoption,
16 placement with a legal guardian, placement with a fit and willing relative, or placement in another planned
17 permanent living arrangement until the child reaches 18 years of age.

18 (20) "Physical abuse" means an intentional act, an intentional omission, or gross negligence
19 resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns,
20 bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or
21 function, or death.

22 (21) "Physical neglect" means either failure to provide basic necessities, including but not limited to
23 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
24 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing
25 the child to be exposed to an unreasonable physical or psychological risk to the child.

26 (22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the
27 parent or other person responsible for the child's welfare:

28 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological

- 1 abuse or neglect;
- 2 (ii) commits or allows sexual abuse or exploitation of the child;
- 3 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child
- 4 was abused or neglected by a parent or other person responsible for the child's welfare;
- 5 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate
- 6 food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or
- 7 offered financial or other reasonable means to do so;
- 8 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or
- 9 welfare by failing to intervene or eliminate the risk; or
- 10 (vi) abandons the child.
- 11 (b) The term does not include a youth not receiving supervision solely because of parental inability
- 12 to control the youth's behavior.
- 13 (23) (a) "Protective services" means services provided by the department:
- 14 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;
- 15 (ii) to enable a child alleged to have been abused or neglected who has been removed from the
- 16 home to safely return to the home; or
- 17 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances
- 18 and the best interests of the child prevent reunification with parents or a return to the home.
- 19 (b) The term includes emergency protective services provided pursuant to 41-3-301, written
- 20 prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to
- 21 parts 4 and 6 of this chapter.
- 22 (24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions
- 23 that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the
- 24 commission of acts of violence against another person residing in the child's home.
- 25 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime
- 26 against the victim.
- 27 (25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to
- 28 the federal Indian Child Welfare Act or [sections 1 through 20 19] means:

~~(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;~~

~~(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or~~

~~(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general~~ a person who meets the provisions of [section 13 12].

(26) "Qualified individual" means a trained professional or licensed clinician who:

(a) has expertise in the therapeutic needs assessment used for placement of youth in a therapeutic group home;

(b) is not an employee of the department; and

(c) is not connected to or affiliated with any placement setting in which children are placed.

(27) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(28) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(29) "Safety and risk assessment" means an evaluation by a child protection specialist following an initial report of child abuse or neglect to assess the following:

(a) the existing threat or threats to the child's safety;

(b) the protective capabilities of the parent or guardian;

(c) any particular vulnerabilities of the child;

(d) any interventions required to protect the child; and

(e) the likelihood of future physical or psychological harm to the child.

(30) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(31) "Sexual exploitation" means:

(a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603;

(b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

(c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

(32) "Therapeutic needs assessment" means an assessment performed by a qualified individual within 30 days of placement of a child in a therapeutic group home that:

(a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool;

(b) determines whether the needs of the child can be met with family members or through placement in a youth foster home or, if not, which appropriate setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals for the child as specified in the child's permanency plan; and

(c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

(33) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(34) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (34), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(35) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 27. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction and venue. (1) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19], in all matters arising under this chapter, a person is subject to a proceeding under this chapter and the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court;

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose;

(d) a youth or youth's parent or guardian who resides in Montana;

(e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in Montana.

(2) Venue is proper in the county where a youth is located or has resided within 180 days before the filing of a petition under this part or a county where the youth's parent or guardian resides or has resided within 180 days before the filing of a petition under this part."

Section 28. Section 41-3-109, MCA, is amended to read:

"41-3-109. Proceedings subject to Indian Child Welfare Act ~~Acts~~. If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4], the proceeding is subject to the federal Indian Child Welfare Act and [sections 1 through 20 19]."

Section 29. Section 41-3-128, MCA, is amended to read:

"41-3-128. Certificate requirements -- supervision -- fees. (1) An applicant for certification as a child protection specialist shall:

(a) successfully complete a course in child protection, as defined by the department by rule, which must include training in:

- (i) ethics;
- (ii) governing statutory and regulatory framework;
- (iii) role of law enforcement;
- (iv) crisis intervention techniques;
- (v) childhood trauma research;
- (vi) evidence-based practices for family preservation and strengthening; and
- (vii) the provisions of the federal Indian Child Welfare Act, 25 U.S.C. 1902, et seq., and [sections 1 through 20 19]; and

(b) demonstrate the applicant's ability to perform all essential functions of the certified child protection role by earning a passing score on a competency examination developed pursuant to 41-3-130.

(2) As a prerequisite to the issuance of a certificate, the department shall require the applicant to submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(3) An applicant who has a history of criminal convictions has the opportunity to demonstrate to the

department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny the certificate if it determines that the applicant is not sufficiently rehabilitated."

Section 30. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in

1 the records or other person responsible for the child's welfare, without disclosure of the identity of any person
2 who reported or provided information on the alleged child abuse or neglect incident contained in the records;

3 (e) a child named in the records who was allegedly abused or neglected or the child's legal
4 guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate
5 appointed by the court to represent a child in a pending case;

6 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

7 (g) approved foster and adoptive parents who are or may be providing care for a child;

8 (h) a person about whom a report has been made and that person's attorney, with respect to the
9 relevant records pertaining to that person only and without disclosing the identity of the reporter or any other
10 person whose safety may be endangered;

11 (i) an agency, including a probation or parole agency, that is legally responsible for the
12 supervision of an alleged perpetrator of child abuse or neglect;

13 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project
14 and that is authorized by the department to conduct the research or evaluation;

15 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a
16 family engagement meeting for the purposes of assessing the needs of the child and family, formulating a
17 treatment plan, and monitoring the plan;

18 (l) the coroner or medical examiner when determining the cause of death of a child;

19 (m) a child fatality review team recognized by the department;

20 (n) a department or agency investigating an applicant for a license or registration that is required to
21 operate a youth care facility, day-care facility, or child-placing agency;

22 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
23 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
24 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
25 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
26 children posed by the person about whom the information is sought, as determined by the department.

27 (p) the news media, if disclosure is limited to confirmation of factual information regarding how the
28 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or

1 guardian, as determined by the department;

2 (q) an employee of the department or other state agency if disclosure of the records is necessary
3 for administration of programs designed to benefit the child;

4 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if
5 disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act or [sections
6 1 through 20 19];

7 (s) a juvenile probation officer who is working in an official capacity with the child who is the
8 subject of a report in the records;

9 (t) an attorney who is hired by or represents the department if disclosure is necessary for the
10 investigation, defense, or prosecution of a case involving child abuse or neglect;

11 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen
12 review board established under Title 41, chapter 3, part 10;

13 (v) a school employee participating in an interview of a child by a child protection specialist, county
14 attorney, or peace officer, as provided in 41-3-202;

15 (w) a member of a county or regional interdisciplinary child information and school safety team
16 formed under the provisions of 52-2-211;

17 (x) members of a local interagency staffing group provided for in 52-2-203;

18 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or

19 (z) a principal of a school or other employee of the school district authorized by the trustees of the
20 district to receive the information with respect to a student of the district who is a client of the department.

21 (4) (a) The records described in subsection (3) must be disclosed to a member of the United
22 States congress or a member of the Montana legislature if all of the following requirements are met:

23 (i) the member receives a written inquiry regarding a child and whether the laws of the United
24 States or the state of Montana that protect children from abuse or neglect are being complied with or whether
25 the laws need to be changed to enhance protections for children;

26 (ii) the member submits a written request to the department requesting to review the records
27 relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the
28 child whose records are to be reviewed, and any other information that will assist the department in locating the

1 records.

2 (iii) before reviewing the records, the member:

3 (A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties
4 for unauthorized release of the information; and

5 (B) receives from the department an orientation of the content and structure of the records.

6 (b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for
7 the member to view but may not be copied, recorded, photographed, or otherwise replicated by the member,
8 and must remain solely in the department's possession. The member must be allowed to view the records in
9 the local office where the case is or was active.

10 (c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date
11 the written request to review records was received by the department.

12 (5) (a) The records described in subsection (3) must be promptly released to any of the following
13 individuals upon a written request by the individual to the department or the department's designee:

14 (i) the attorney general;

15 (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect
16 occurred;

17 (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect
18 occurred; or

19 (iv) the office of the child and family ombudsman.

20 (b) The records described in subsection (3) must be promptly disclosed by the department to an
21 appropriate individual described in subsection (5)(a) or to a county or regional interdisciplinary child information
22 and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating
23 that any of the following has occurred:

24 (i) the death of the child as a result of child abuse or neglect;

25 (ii) a sexual offense, as defined in 46-23-502, against the child;

26 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502;

27 or

28 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances

1 constituting the criminal manufacture or distribution of dangerous drugs.

2 (c) (i) The department shall promptly disclose the results of an investigation to an individual
3 described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety
4 team established pursuant to 52-2-211 upon the determination that:

5 (A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or
6 Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or

7 (B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession
8 of a Schedule I or Schedule II drug that is prohibited by state law.

9 (ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted
10 to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have
11 contact with drug paraphernalia as defined in 45-10-101.

12 (d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be
13 released within 5 business days to the county attorney of the county in which the acts that are the subject of a
14 report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual
15 exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a)
16 and to a county or regional interdisciplinary child information and school safety team established pursuant to
17 52-2-211.

18 (ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides
19 confidential services to victims of sexual assault shall report to the department as provided in this part without
20 disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.

21 (iii) When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of
22 sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual
23 exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a
24 request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as
25 described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

26 (6) A school or school district may disclose, without consent, personally identifiable information
27 from the education records of a pupil to the department, the court, a review board, and the child's assigned
28 attorney, guardian ad litem, or special advocate.

(7) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(8) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(9) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a) and (5). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(10) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (9) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(11) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost."

Section 31. Section 41-3-301, MCA, is amended to read:

" 41-3-301. (Temporary) Emergency protective service. (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must:

- 1 (a) include the reason for removal;
- 2 (b) include information regarding the option for an emergency protective services hearing within 5
- 3 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;
- 4 (c) provide contact information for the child protection specialist, the child protection specialist's
- 5 supervisor, and the office of state public defender; and
- 6 (d) advise the parents, parent, guardian, or other person having physical or legal custody of the
- 7 child that the parents, parent, guardian, or other person:
 - 8 (i) has the right to receive a copy of the affidavit as provided in subsection (6);
 - 9 (ii) has the right to attend and participate in an emergency protective services hearing, if one is
 - 10 requested, and the show cause hearing, including providing statements to the judge;
 - 11 (iii) may have a support person present during any in-person meeting with the child protection
 - 12 specialist concerning emergency protective services; and
 - 13 (iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.
- 14 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
- 15 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
- 16 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
- 17 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
- 18 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
- 19 member of the household, the department shall take appropriate steps for the protection of the child, which may
- 20 include:
 - 21 (a) making reasonable efforts to protect the child and prevent the removal of the child from the
 - 22 parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or
 - 23 family member;
 - 24 (b) making reasonable efforts to remove the person who allegedly committed the partner or family
 - 25 member assault or strangulation of a partner or family member from the child's residence if it is determined that
 - 26 the child or another family or household member is in danger of partner or family member assault or
 - 27 strangulation of a partner or family member; and
 - 28 (c) providing services to help protect the child from being placed with or having unsupervised

visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19], if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the child protection specialist shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

41-3-301. (Effective July 1, 2023) Emergency protective service. (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate

1 or apparent danger of harm may immediately remove the child and place the child in a protective facility. After
2 ensuring that the child is safe, the department may make a request for further assistance from the law
3 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the
4 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
5 time the placement is made or as soon after placement as possible. Notification under this subsection must:

6 (a) include the reason for removal;

7 (b) include information regarding the emergency protective services and show cause hearings and
8 the purpose of the hearings; and

9 (c) advise the parents, parent, guardian, or other person having physical or legal custody of the
10 child that the parents, parent, guardian, or other person may have a support person present during any in-
11 person meeting with the child protection specialist concerning emergency protective services.

12 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
13 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
14 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
15 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
16 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
17 member of the household, the department shall take appropriate steps for the protection of the child, which may
18 include:

19 (a) making reasonable efforts to protect the child and prevent the removal of the child from the
20 parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or
21 family member;

22 (b) making reasonable efforts to remove the person who allegedly committed the partner or family
23 member assault or strangulation of a partner or family member from the child's residence if it is determined that
24 the child or another family or household member is in danger of partner or family member assault or
25 strangulation of a partner or family member; and

26 (c) providing services to help protect the child from being placed with or having unsupervised
27 visitation with the person alleged to have committed partner or family member assault or strangulation of a
28 partner or family member until the department determines that the alleged offender has met conditions

1 considered necessary to protect the safety of the child.

2 (3) If the department determines that an adult member of the household is the victim of partner or
3 family member assault or strangulation of a partner or family member, the department shall provide the adult
4 victim with a referral to a domestic violence program.

5 (4) A child who has been removed from the child's home or any other place for the child's
6 protection or care may not be placed in a jail.

7 (5) The department may locate and contact extended family members upon placement of a child in
8 out-of-home care. The department may share information with extended family members for placement and
9 case planning purposes.

10 (6) If a child is removed from the child's home by the department, a child protection specialist shall
11 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
12 copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An
13 abuse and neglect petition must be filed in accordance with 41-3-422 within 5 working days, excluding
14 weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for
15 the care of the child have been made by the parents or a written prevention plan has been entered into
16 pursuant to 41-3-302.

17 (7) Except as provided in the federal Indian Child Welfare Act or sections 1 through 20 19, if
18 applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise
19 stipulated by the parties pursuant to 41-3-434.

20 (8) If the department determines that a petition for immediate protection and emergency protective
21 services must be filed to protect the safety of the child, the child protection specialist shall interview the parents
22 of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be
23 filed. The district court may immediately issue an order for immediate protection of the child.

24 (9) The department shall make the necessary arrangements for the child's well-being as are
25 required prior to the court hearing."
26

27 **Section 32.** Section 41-3-306, MCA, is amended to read:

28 **"41-3-306. (Temporary) Emergency protective services hearing on request -- exceptions. (1) (a)**

1 If requested by the parents, parent, guardian, or other person having physical or legal custody of a child
2 removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services
3 hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5
4 business days.

5 (b) The department shall provide notification of the option for the hearing as required under 41-3-
6 301.

7 (c) A hearing is not required if the child is released prior to the time of the requested hearing.

8 (2) The hearing may be held in person, by videoconference, or, if no other means are available, by
9 telephone.

10 (3) The child and the child's parents, parent, guardian, or other person having physical or legal
11 custody of the child must be represented by counsel at the hearing.

12 (4) If the court determines that continued out-of-home placement is needed, the court shall:

13 (a) establish guidelines for visitation by the parents, parent, guardian, or other person having
14 physical or legal custody of the child pending the show cause hearing; and

15 (b) review the availability of options for a kinship placement and make recommendations if
16 appropriate.

17 (5) The court may direct the department to develop and implement a treatment plan before the
18 show cause hearing if the parents, parent, guardian, or other person having physical or legal custody of the
19 child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment
20 plan if a plan is developed.

21 (6) If the court determines continued removal is not appropriate, the child must be immediately
22 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

23 (7) This section does not apply:

24 (a) in judicial districts that are holding voluntary prehearing conferences pursuant to 41-3-307; or

25 (b) to cases involving an Indian child who is subject to the federal Indian Child Welfare Act.

26 (8) The emergency protective services hearing is an emergency proceeding for the purposes of
27 [sections 1 through 20 19] and is not subject to the notice requirements of [sections 1 through 20 19].

28 (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

1 **41-3-306. (Effective July 1, 2023) Emergency protective services hearing -- exception.** (1) (a) A
2 district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to 41-3-
3 301 to determine whether there is probable cause to continue the removal beyond 5 business days.

4 (b) The department shall provide notification of the hearing as required under 41-3-301.

5 (c) A hearing is not required if the child is released prior to the time of the required hearing.

6 (2) The hearing may be held in person, by videoconference, or, if no other means are available, by
7 telephone.

8 (3) The child and the child's parents, parent, guardian, or other person having physical or legal
9 custody of the child must be represented by counsel at the hearing.

10 (4) If the court determines that continued out-of-home placement is needed, the court shall:

11 (a) establish guidelines for visitation by the parents, parent, guardian, or other person having
12 physical or legal custody of the child pending the show cause hearing; and

13 (b) review the availability of options for a kinship placement and make recommendations if
14 appropriate.

15 (5) The court may direct the department to develop and implement a treatment plan before the
16 show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child
17 stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if
18 a plan is developed.

19 (6) If the court determines continued removal is not appropriate, the child must be immediately
20 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

21 (7) This section does not apply to cases involving an Indian child who is subject to the federal
22 Indian Child Welfare Act.

23 (8) The emergency protective services hearing is an emergency proceeding for the purposes of
24 [sections 1 through 20 19] and is not subject to the notice requirements of [sections 1 through 20 19]."
25

26 **Section 33.** Section 41-3-307, MCA, is amended to read:

27 **"41-3-307. (Temporary) Voluntary prehearing conferences -- pilot project counties.** (1) The
28 parents, parent, guardian, or other person having physical or legal custody of a child who has been removed

1 from the home pursuant to 41-3-301 may participate in a conference within 5 days of the child's removal and
2 before a show cause hearing held by the court if the court is participating in a pilot project testing the
3 effectiveness of prehearing conferences.

4 (2) A prehearing conference may be held under this section only if it involves:

5 (a) the parents, parent, guardian, or other person having physical or legal custody of the child;

6 (b) the person's legal counsel;

7 (c) the county attorney's office; and

8 (d) a department social worker.

9 (3) To the greatest degree possible using available funding, the meetings must be conducted by
10 an independent and trained facilitator.

11 (4) At a minimum, the meetings must involve discussion of:

12 (a) the child's current placement and options for continued placement if the child remains out of the
13 home;

14 (b) whether other options exist for an in-home safety plan or resource that may allow the child to
15 remain in the home;

16 (c) parenting time schedules; and

17 (d) treatment services for the family.

18 (5) This section does not apply to cases involving an Indian child who is subject to the federal
19 Indian Child Welfare Act or [sections 1 through 20 19].

20 (6) This section applies to a district court participating in the prehearing conference pilot project
21 funded by the court improvement program on May 14, 2021, and to any district court in a rural county or
22 multicounty district that chooses to hold conferences in accordance with this section on or after that date.
23 (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)"

24
25 **Section 34.** Section 41-3-422, MCA, is amended to read:

26 **"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter
27 must be initiated by the filing of a petition. A petition may request the following relief:

28 (i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in 41-3-607;

(vi) appointment of a guardian pursuant to 41-3-444;

(vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4], the standards of proof required for legal relief under the federal Indian Child Welfare Act and [sections 1 through 20 19] apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act and [sections 1 through 20 19], if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require. If personal service cannot be made upon a putative father, the court may not provide for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the opinion of the court, the interests of justice require counsel to be appointed or assigned.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard

1 does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the
2 child must be given notice of all reviews by the reviewing body.

3 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the
4 child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this
5 section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is
6 presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the
7 best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in
8 the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings
9 held pursuant to this chapter involving the custody of the child.

10 (10) An abuse and neglect petition must state:

11 (a) the nature of the alleged abuse or neglect and of the relief requested;

12 (b) the full name, age, and address of the child and the name and address of the child's parents or
13 the guardian or person having legal custody of the child; and

14 (c) the names, addresses, and relationship to the child of all persons who are necessary parties to
15 the action.

16 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-
17 425.

18 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
19 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
20 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family
21 engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution
22 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department
23 is a party to the original proceeding, a representative of the department who has complete authority to settle the
24 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

25 (13) Service of a petition under this section must be accompanied by a written notice advising the
26 child's parent, guardian, or other person having physical or legal custody of the child of the:

27 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or
28 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1

1 through 20 19], if applicable;

2 (b) right to contest the allegations in the petition; and

3 (c) timelines for hearings and determinations required under this chapter.

4 (14) If appropriate, orders issued under this chapter must contain a notice provision advising a
5 child's parent, guardian, or other person having physical or legal custody of the child that:

6 (a) the court is required by federal and state laws to hold a permanency hearing to determine the
7 permanent placement of a child no later than 12 months after a judge determines that the child has been
8 abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

9 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that
10 termination of parental rights is in the best interests of the child and the state is required to file a petition to
11 terminate parental rights; and

12 (c) completion of a treatment plan does not guarantee the return of a child.

13 (15) A court may appoint a standing master to conduct hearings and propose decisions and orders
14 to the court for court consideration and action. A standing master may not conduct a proceeding to terminate
15 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
16 in the area of child abuse and neglect laws."

17

18 **Section 35.** Section 41-3-423, MCA, is amended to read:

19 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**

20 **findings -- permanency plan.** (1) (a) The department shall make reasonable efforts to prevent the necessity of
21 removal of a child from the child's home and to reunify families that have been separated by the state.

22 (b) (i) For the purposes of this subsection (1), the term "reasonable efforts" means the department
23 shall in good faith develop and implement voluntary services agreements and treatment plans that are designed
24 to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing
25 voluntary services agreements and treatment plans.

26 (ii) The term includes but is not limited to:

27 (A) written prevention plans;

28 (B) development of individual written case plans specifying state efforts to preserve or reunify

1 families;

2 (C) placement in the least disruptive setting possible with priority given to family placement as
3 provided in 41-3-439;

4 (D) provision of services pursuant to a case plan that is designed to address the parent's treatment
5 and other needs precluding the parent from safely parenting, including but not limited to individual and family
6 therapy, parent education, substance abuse treatment, and trauma-related services; and

7 (E) periodic review of each case to ensure timely progress toward reunification or permanent
8 placement.

9 (c) In determining preservation or reunification services to be provided and in making reasonable
10 efforts at providing preservation or reunification services, the child's health and safety are of paramount
11 concern.

12 (2) Except in a proceeding subject to the federal Indian Child Welfare Act or [sections 1 through 20
13 19], the department may, at any time during an abuse and neglect proceeding, make a request for a
14 determination that preservation or reunification services need not be provided. If an indigent parent is not
15 already represented by counsel, the court shall immediately provide for the appointment or assignment of
16 counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a
17 finding that the department need not make reasonable efforts to provide preservation or reunification services if
18 the court finds that the parent has:

19 (a) subjected a child to aggravated circumstances, including but not limited to abandonment,
20 torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

21 (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate
22 homicide of a child;

23 (c) committed aggravated assault against a child;

24 (d) committed neglect of a child that resulted in serious bodily injury or death; or

25 (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and
26 the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately
27 care for the child at issue.

28 (3) Preservation or reunification services are not required for a putative father, as defined in 42-2-

201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying in-state and out-of-state placements, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the

necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

Section 36. Section 41-3-425, MCA, is amended to read:

"41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsections (3) through (5), the court shall immediately appoint the office of state public defender to assign counsel for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act or [sections 1 through 20 19].

(3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

(5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19], a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:

(a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

(b) the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel."

1

2 **Section 37.** Section 41-3-427, MCA, is amended to read:

3 **"41-3-427. Petition for immediate protection and emergency protective services -- order --**

4 **service.** (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused
5 or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for
6 immediate protection and emergency protective services. In implementing the policy of this section, the child's
7 health and safety are of paramount concern.

8 (b) A petition for immediate protection and emergency protective services must state the specific
9 authority requested and must be supported by an affidavit signed by a representative of the department stating
10 in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the
11 case is subject to the federal Indian Child Welfare Act or [sections 1 through ~~20~~ 19], clear and convincing
12 evidence that a child is abused or neglected or is in danger of being abused or neglected. The affidavit of the
13 department representative must contain information, if any, regarding statements made by the parents about
14 the facts of the case.

15 (c) If from the alleged facts presented in the affidavit it appears to the court that there is probable
16 cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through ~~20~~ 19], clear and
17 convincing evidence to believe that the child has been abused or neglected or is in danger of being abused and
18 neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2) until
19 the adjudication hearing or the temporary investigative hearing. If it appears from the alleged facts contained in
20 the affidavit that there is insufficient probable cause or, if the case is subject to the federal Indian Child Welfare
21 Act or [sections 1 through ~~20~~ 19], clear and convincing evidence to believe that the child has been abused or
22 neglected or is in danger of being abused or neglected, the court shall dismiss the petition.

23 (d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney
24 for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the
25 person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of
26 the petition and affidavit.

27 (e) The petition for immediate protection and emergency protective services must include a notice
28 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the

1 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
2 person present during any in-person meeting with a child protection specialist concerning emergency protective
3 services. Reasonable accommodation must be made in scheduling an in-person meeting with the child
4 protection specialist.

5 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the
6 federal Indian Child Welfare Act or [sections 1 through 20 19], clear and convincing evidence based on the
7 petition and affidavit, the court may issue an order for immediate protection of the child. The court shall
8 consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to
9 the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or
10 [sections 1 through 20 19], clear and convincing evidence, the court may issue an order granting the following
11 forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

12 (a) the right of entry by a peace officer or department worker;

13 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to
14 care provided by a noncustodial parent, kinship or foster family, group home, or institution;

15 (c) the right of the department to locate, contact, and share information with any extended family
16 members who may be considered as placement options for the child;

17 (d) a requirement that the parents, guardian, or other person having physical or legal custody
18 furnish information that the court may designate and obtain evaluations that may be necessary to determine
19 whether a child is a youth in need of care;

20 (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the
21 home to allow the child to remain in the home;

22 (f) a requirement that the parent provide the department with the name and address of the other
23 parent, if known, unless parental rights to the child have been terminated;

24 (g) a requirement that the parent provide the department with the names and addresses of
25 extended family members who may be considered as placement options for the child who is the subject of the
26 proceeding; and

27 (h) any other temporary disposition that may be required in the best interests of the child that does
28 not require an expenditure of money by the department unless the court finds after notice and a hearing that the

expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422 or, if the case involves an Indian child, as provided in [section 8]."

Section 38. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing -- order. (1) (a) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19], a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 20 19], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act or [sections 1 through 20 19], if applicable.

(3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed

1 issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may
2 consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or
3 legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements
4 made by the affected child is admissible at the hearing. The parent, guardian, or other person may be
5 represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

6 (4) At the show cause hearing, the court shall explain the procedures to be followed in the case
7 and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or
8 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1
9 through ~~20~~ 19], if applicable, and the right to challenge the allegations contained in the petition. The parent,
10 guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or
11 deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine
12 whether the notice requirements of the federal Indian Child Welfare Act or [section 8], if applicable, have been
13 met.

14 (5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through ~~20~~ 19], if
15 applicable, the court shall make written findings on issues including but not limited to the following:

16 (a) whether the child should be returned home immediately if there has been an emergency
17 removal or remain in temporary out-of-home care or be removed from the home;

18 (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the
19 home would be contrary to the child's best interests and welfare;

20 (c) whether the department has made reasonable efforts to avoid protective placement of the child
21 or to make it possible to safely return the child to the child's home;

22 (d) financial support of the child, including inquiry into the financial ability of the parents, guardian,
23 or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and
24 treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

25 (e) whether another hearing is needed and, if so, the date and time of the next hearing.

26 (6) The court may consider:

27 (a) terms and conditions for parental visitation; and

28 (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are

1 needed.

2 (7) Following the show cause hearing, the court may enter an order for the relief requested or
3 amend a previous order for immediate protection of the child if one has been entered. The order must be in
4 writing.

5 (8) If a child who has been removed from the child's home is not returned home after the show
6 cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having
7 physical or legal custody of the child named in the petition may request that a citizen review board, if available
8 pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a
9 recommendation to the district court, as provided in 41-3-1010.

10 (9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if
11 the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437
12 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the
13 parties pursuant to 41-3-434 and order of the court."

14

15 **Section 39.** Section 41-3-437, MCA, is amended to read:

16 **"41-3-437. Adjudication -- temporary disposition -- findings -- order.** (1) Upon the filing of an
17 appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-
18 432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or
19 may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the
20 time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by
21 the parties pursuant to 41-3-434, and unforeseen personal emergencies.

22 (2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a
23 preponderance of the evidence, except as provided in the federal Indian Child Welfare Act or [sections 1
24 through 20 19], if applicable, that the child is a youth in need of care. Except as otherwise provided in this part,
25 the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an
26 adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that
27 resulted in state intervention and upon which disposition, case work, court review, and possible termination are
28 based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person;

(ii) the continuity of care the person has offered the child by providing permanency or stability in residence, schooling, and activities outside of the home; and

(iii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The

temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

- (i) which allegations of the petition have been proved or admitted, if any;
- (ii) whether there is a legal basis for continued court and department intervention; and
- (iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

- (i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;
- (ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.
- (iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;
- (iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and
- (v) the department to continue efforts to notify noncustodial parents.

(8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 29 19], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child."

Section 40. Section 41-3-444, MCA, is amended to read:

"41-3-444. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1)

The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-

438, 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (9);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(f) it is in the best interests of the child to remain or be placed with the potential guardian;

(g) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4], the Indian child's tribe has received notification from the state of the initiation of the proceedings.

(3) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint in the same manner provided for in 41-3-438(4).

(4) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except for the department's provision of a financial subsidy, if any, pursuant to subsection (9).

(5) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

(6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

(7) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(8) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-438.

(9) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

(10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

Section 41. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act or [sections 1 through 29 19], if applicable, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through

1 (2)(e);

2 (e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

3 (f) the child is an adjudicated youth in need of care and both of the following exist:

4 (i) an appropriate treatment plan that has been approved by the court has not been complied with
5 by the parents or has not been successful; and

6 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a
7 reasonable time.

8 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
9 reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely
10 result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit,
11 unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall
12 consider but is not limited to the following:

13 (a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to
14 render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a
15 reasonable time;

16 (b) a history of violent behavior by the parent;

17 (c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
18 ability to care and provide for the child; and

19 (d) present judicially ordered long-term confinement of the parent.

20 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
21 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the
22 child.

23 (4) A treatment plan is not required under this part upon a finding by the court following hearing if:

24 (a) the parent meets the criteria of subsections (1)(a) through (1)(e);

25 (b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume
26 the role of parent within a reasonable time;

27 (c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the
28 parent is not in the best interests of the child because of the child's circumstances, including placement options,

age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred.

(5) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 20 19], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child."

Section 42. Section 42-2-102, MCA, is amended to read:

"42-2-102. Proceedings subject to Indian Child Welfare Act Acts. A proceeding under this title that pertains to an Indian child, as defined in ~~the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., [section 4],~~ is subject to ~~that act~~ the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., and [sections 1 through 20 19]."

Section 43. Section 42-2-604, MCA, is amended to read:

"42-2-604. Contents of petition for termination of parental rights. (1) The petition for termination of parental rights must state:

- (a) the identity of the petitioner;
- (b) the date and location of the birth of the child;
- (c) the date of the relinquishment by the birth mother or relinquishing parent;
- (d) the current location of the child;
- (e) the names and locations, if known, of any putative or presumed father of the child;
- (f) whether a parent is one from whom consent is not required;
- (g) whether court orders from any other proceeding have been issued terminating parental rights to the child that is the subject of the petition;
- (h) any other evidence supporting termination of the legal rights that a person has with regard to the child; and
- (i) a request for temporary custody of the child prior to the adoption.

(2) The petitioner shall file with the petition for termination of parental rights the following documents received in support of the petition:

- (a) any relinquishments and consents to adoption;
- (b) any denials of paternity;
- (c) any acknowledgments of paternity and denial of parental rights;
- (d) any affidavits from the putative father registry that have been executed by the department;
- (e) the adoptive decision support services report required under 42-2-409;
- (f) proof of prior service of any notice or acknowledgment of service or waiver of service received;

and

- (g) proof of compliance with the federal Indian Child Welfare Act of 1978, [sections 1 through 20 19], and Interstate Compact on the Placement of Children, if applicable."

Section 44. Section 42-4-102, MCA, is amended to read:

"42-4-102. Duties of placing parent. (1) A parent who is directly placing a child for adoption shall execute a voluntary relinquishment and consent to adopt, including:

- (a) receiving the adoptive decision support services required by 42-2-409; and
- (b) if the parent is a minor, being advised by legal counsel other than the attorney representing the prospective adoptive parent.

(2) A placing parent shall identify and provide information on the location of any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including:

- (a) any current spouse;
- (b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child; and
- (c) any adoptive parent.

(3) A placing parent shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 20 19].

(4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

- 1 (a) the disclosures of medical and social history required pursuant to 42-3-101;
- 2 (b) a certified copy of the child's birth certificate or other document certifying the place and date of
- 3 the child's birth; and
- 4 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.
- 5 (5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice
- 6 of parental placement.
- 7 (6) A parent placing a child for adoption in a direct parental placement adoption shall file a
- 8 disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent or
- 9 any person acting on behalf of the prospective adoptive parent.
- 10 (7) Subject to the limitations set in 42-7-102, expenses for adoptive decision support services,
- 11 postadoptive counseling, outpatient mental health services, legal fees, and the reasonable costs of preparing
- 12 reports documenting the required disclosures of medical and social history and the disclosures documenting
- 13 disbursements are allowable expenses that can be paid for by the prospective adoptive parent."

14

15 **Section 45.** Section 42-4-103, MCA, is amended to read:

16 **"42-4-103. Direct parental placement -- information to be filed.** (1) A parent who proposes to place

17 a child for adoption with a prospective adoptive parent who resides in Montana and who is not the child's

18 stepparent or an extended family member shall file with the court of the county in which the prospective

19 adoptive parent or the parent making the placement resides the following:

- 20 (a) a notice of parental placement containing the following information:
- 21 (i) the name and address of the placing parent;
- 22 (ii) the name and address of each prospective adoptive parent;
- 23 (iii) the name and address or expected date and place of birth of the child;
- 24 (iv) the identity and information on the location of any other legal parent or guardian of the child
- 25 and any other person required to receive notice under 42-2-605, including any current spouse, any spouse who
- 26 is the other birth parent and to whom the parent was married at the probable time of conception or birth of the
- 27 child, and any adoptive parent;
- 28 (v) all relevant information pertaining to any Indian heritage of the child that would bring the child

1 within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 20
2 19]; and

3 (vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each
4 of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

5 (b) a relinquishment and consent to adoption of the child by the adoptive parent;

6 (c) the adoptive decision support services report required by 42-2-409;

7 (d) the medical and social history disclosures required by 42-3-101;

8 (e) a report of disbursements identifying all payments made to or to the benefit of the placing
9 parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement by
10 each person furnishing information in the report attesting to the truthfulness of the information furnished by that
11 person;

12 (f) a certified copy of the child's birth certificate or other document certifying the place and date of
13 the child's birth;

14 (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and

15 (h) the preplacement evaluation.

16 (2) The notice of parental placement must be signed by the parent making the placement."
17

18 **Section 46.** Section 42-4-203, MCA, is amended to read:

19 **"42-4-203. Duties of placing parent.** (1) A parent who is placing a child for adoption shall comply
20 with the provisions for executing a voluntary relinquishment and consent to adopt.

21 (2) A parent placing a child for adoption shall identify and provide information on the location of:

22 (a) any other legal parent or guardian of the child and any other person required to receive notice
23 under 42-2-605, including any current spouse; and

24 (b) any spouse who is the other birth parent and to whom the parent was married at the probable
25 time of conception or birth of the child.

26 (3) A parent placing a child for adoption shall identify and provide information pertaining to any
27 Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare
28 Act, 25 U.S.C. 1901, et seq., or [sections 1 through 20 19].

- 1 (4) A parent placing a child for adoption shall provide:
- 2 (a) the disclosures of medical and social history;
- 3 (b) a certified copy of the child's birth certificate or other document certifying the place and date of
- 4 the child's birth; and
- 5 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child."
- 6

7 **Section 47.** Section 42-4-209, MCA, is amended to read:

8 **"42-4-209. Postplacement department or agency evaluation.** (1) The department or agency shall

9 complete a written postplacement evaluation. The postplacement evaluation must be conducted according to

10 the department's or agency's standards for placement of a child and at a minimum must include a personal

11 interview with the prospective adoptive parent in that person's home and observation of the relationship

12 between the child and the prospective adoptive parent.

13 (2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department or

14 agency shall file the postplacement evaluation.

15 (3) The evaluation must include the following information:

- 16 (a) whether the child is legally free for adoption;
- 17 (b) whether the proposed home is suitable for the child;
- 18 (c) a statement that the medical and social histories of the birth parents and child have been
- 19 provided to the prospective adoptive parent;
- 20 (d) an assessment of adaptation by the prospective adoptive parent to parenting the child;
- 21 (e) a statement that the 6-month postplacement evaluation period has been complied with or
- 22 should be waived;
- 23 (f) any other circumstances and conditions that may have a bearing on the adoption and of which
- 24 the court should have knowledge;
- 25 (g) whether the agency waives notice of the proceeding;
- 26 (h) a statement that any applicable provision of law governing an interstate or intercountry
- 27 placement of the child has been complied with; and
- 28 (i) a statement of compliance with any applicable provisions of the federal Indian Child Welfare

1 Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20 19].

2 (4) The evaluation must contain a definite recommendation stating the reasons for or against the
3 proposed adoption."
4

5 **Section 48.** Section 42-5-101, MCA, is amended to read:

6 **"42-5-101. Petition for adoption.** (1) A petition for adoption must be verified and must specify:

7 (a) the full names, ages, and place and duration of residence of the petitioners;

8 (b) the current marital status of petitioners and, if married, the place and date of the marriage;

9 (c) the circumstances under which the petitioners obtained physical custody of the child and the
10 name of the individual or agency that placed the child;

11 (d) the date and place of birth of the child, if known;

12 (e) the name used for the child in the proceeding and, if a change in name is desired, the full name
13 by which the child is to be known;

14 (f) that it is the desire of the petitioners that the relationship of parent and child be established
15 between the petitioners and the child and to have all the rights and be subject to all the duties of that
16 relationship;

17 (g) a full description and statement of value of all property owned or possessed by the child;

18 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the
19 adoption;

20 (i) that any applicable law governing interstate or intercountry placement was complied with;

21 (j) that, if applicable, the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., ~~was and~~
22 [sections 1 through 20 19] were complied with;

23 (k) whether a previous petition has been filed by the petitioners to adopt the child at issue or any
24 other child in any court and the disposition of the petitions; and

25 (l) the name and address, if known, of any person who is entitled to receive notice of the petition
26 for adoption.

27 (2) There must be attached to or accompanying the petition:

28 (a) any written consent required by 42-2-301;

- 1 (b) a certified copy of any court order terminating the rights of the child's parents;
- 2 (c) a certified copy of any existing court order in any pending proceeding concerning custody of or
- 3 visitation with the child;
- 4 (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child
- 5 with a special need;
- 6 (e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;
- 7 (f) a disclosure of any disbursements made in connection with the adoption proceeding.
- 8 (3) One copy of the petition must be retained by the court. A copy must be sent to:
- 9 (a) the department or to the agency participating in the adoption proceeding;
- 10 (b) the parent placing the child for adoption in a direct parental placement adoption; or
- 11 (c) the child's guardian ad litem if the child has one.
- 12 (4) Proceedings initiated under this part are subject to the Montana Rules of Civil Procedure
- 13 except as modified by this part."
- 14

15 **Section 49.** Section 42-5-107, MCA, is amended to read:

16 **"42-5-107. Best interests of child.** (1) In determining whether to grant a petition to adopt, the court

17 shall consider all relevant factors in determining the best interests of the child. The court shall consider factors

18 relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child,

19 and familial stability.

20 (2) In a contested adoption proceeding involving a child, the court shall consider the factors set out

21 in subsection (1) and shall also consider:

22 (a) the nature and length of any relationship already established between a child and any person

23 seeking to adopt the child;

24 (b) the nature of any family relationship between the child and any person seeking to adopt the

25 child and whether that person has established a positive emotional relationship with the child;

26 (c) the harm that could result to the child from a change in placement;

27 (d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

28 (e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or

1 the department or agency whose consent to the adoption is required.

2 (3) In an Indian child placement, the court shall determine if the requirements of the federal Indian
3 Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20 19] have been met."

4

5 **Section 50.** Section 47-1-104, MCA, is amended to read:

6 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at**
7 **public expense.** (1) There is a statewide public defender system, which is required to deliver public defender
8 services in all courts in this state. The system is supervised by the director.

9 (2) The director shall approve a strategic plan for service delivery and divide the state into not
10 more than 11 public defender regions. The director may establish a regional office to provide public defender
11 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in
12 the region, or utilize other service delivery methods as appropriate and consistent with the purposes described
13 in 47-1-102.

14 (3) When a court orders the assignment of a public defender, the appropriate office shall
15 immediately assign a public defender qualified to provide the required services. The director shall establish
16 protocols to ensure that the offices make appropriate assignments in a timely manner.

17 (4) A court may order assignment of a public defender under this chapter in the following cases:

18 (a) in cases in which a person is entitled to assistance of counsel at public expense because of
19 financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as
20 follows:

21 (i) for a person charged with a felony or charged with a misdemeanor for which there is a
22 possibility of incarceration, as provided in 46-8-101;

23 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as
24 provided in 40-6-119;

25 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
26 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian
27 Child Welfare Act and [section 11 10], as provided in 41-3-425;

28 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

- (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;
- (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
- (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;
- (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;
- (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and
- (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.
- (b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:
- (i) as provided for in 41-3-425;
- (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;
- (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;
- (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;
- (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;
- (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;
- (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and
- (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).
- (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a

1 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
2 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

3 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public
4 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad
5 litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service
6 for the statewide public defender system and does not result in a conflict of interest."

7
8 **Section 51.** Section 52-2-117, MCA, is amended to read:

9 **"52-2-117. Indian child welfare specialist.** (1) The director of the department shall appoint a
10 qualified person to act as an Indian child welfare specialist.

11 (2) The duties of the specialist include:

12 (a) developing Indian foster homes and other Indian placement resources;

13 (b) providing technical advice to tribal, state, and county agencies and district courts on matters
14 pertaining to Indian child welfare;

15 (c) providing assistance in negotiating cooperative agreements to provide foster care services to
16 Indian children;

17 (d) conducting training seminars on implementing the federal Indian Child Welfare Act of 1978, {25
18 U.S.C. 1901, et seq.} and [sections 1 through 20 19];

19 (e) applying for and accepting grants and other funds for Indian child welfare activities;

20 (f) developing and maintaining a list of attorneys to represent indigent parents and Indian
21 custodians in Indian child welfare proceedings;

22 (g) making recommendations to the department on legislation and rules concerning Indian child
23 welfare matters; and

24 (h) performing other duties concerning Indian child welfare matters as determined by the director."
25

26 **NEW SECTION. Section 52. Notification to tribal governments.** The secretary of state shall send a
27 copy of [this act] to each federally recognized tribal government in Montana.
28

NEW SECTION. Section 53. Codification instruction. [Sections 1 through ~~20~~ 19] are intended to be codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 1 through ~~20~~ 19].

5 NEW SECTION. **Section 54. Effective dates.** (1) Except as provided in subsection (2), [this act] is
6 effective July 1, 2023.

7 (2) [Section ~~33~~ 32] and this section are effective on passage and approval.

- END -

HOUSE BILL NO. 317

INTRODUCED BY J. WINDY BOY, M. WEATHERWAX, C. KEOGH, D. HAWK, E. KERR-CARPENTER, A.
BUCKLEY, K. SULLIVAN, K. KORTUM, T. FRANCE, E. STAFMAN, M. CAFERRO, M. THANE, F. SMITH, M.
FOX, S. MORIGEAU, J. ETCHART, K. ABBOTT, P. TUSS, S. STEWART PEREGOY, B. CARTER, Z.
ZEPHYR, M. ROMANO, L. SMITH, D. BAUM, E. MATTHEWS, S. HOWELL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA INDIAN CHILD WELFARE ACT;
PROVIDING REQUIREMENTS FOR DETERMINING INDIAN STATUS AND INDIAN TRIBE; ESTABLISHING
REQUIREMENTS FOR COURT PROCEEDINGS, EVIDENCE, AND CONSENT; PROVIDING DEFINITIONS;
AMENDING SECTIONS 40-6-405, 40-6-407, 40-6-413, 40-6-414, 40-6-1001, 40-7-135, 41-3-102, 41-3-103,
41-3-109, 41-3-128, 41-3-205, 41-3-301, 41-3-306, 41-3-307, 41-3-422, 41-3-423, 41-3-425, 41-3-427, 41-3-
432, 41-3-437, 41-3-444, 41-3-609, 42-2-102, 42-2-604, 42-4-102, 42-4-103, 42-4-203, 42-4-209, 42-5-101, 42-
5-107, 47-1-104, AND 52-2-117, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING
EFFECTIVE DATES AND A TERMINATION DATE."

WHEREAS, THERE IS, AT THE PRESENT TIME, A COURT CASE BEFORE THE UNITED STATES SUPREME COURT
KNOWN AS HAALAND V. BRACKEEN, NO. 21-376, THAT HAS THE POTENTIAL TO OVERTURN OR MODIFY THE INDIAN CHILD
WELFARE ACT IN ITS CURRENT FORM, AND THE LEGISLATURE SEEKS TO PROVIDE GUIDANCE FOR INDIAN CHILD
PROTECTION CASES IN THE INTERIM AS THIS CASE IS DECIDED. THE LEGISLATURE DOES NOT EXPECT THIS TO BE THE
FINAL WORD ON HOW WE DEAL WITH INDIAN CHILD WELFARE ISSUES OR HOW WE SEEK TO PROVIDE FOR ALL OF
MONTANA'S CHILDREN WITHIN THE CHILD PROTECTION SYSTEM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through ~~20~~ 19 16] may be cited as the "Montana
Indian Child Welfare Act".

NEW SECTION. Section 2. Legislative findings -- purpose. (1) The legislature recognizes that in

possibly no other area of concurrent tribal and state law is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the child, or the interests of the child's tribe. ~~Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian Child Welfare Act and [sections 1 through 20 19], the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in [sections 1 through 20 19].~~

(2) The legislature further finds that when placement away from the parent or Indian custodian is necessary for the Indian child's safety, the state is committed to a placement that reflects and honors the unique values of the Indian child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.

(3) ~~It is the intent of the legislature that [sections 1 through 20 19] serve as a means of clarifying existing laws and codifying existing policies and practices.~~

(4) ~~The legislature further intends that nothing in [sections 1 through 20 19] interfere with policies and procedures that are derived from agreements entered into between the department and a tribe or tribe s, as authorized by 25 U.S.C. 1919. The legislature finds that [sections 1 through 20 19] specify the minimum requirements that must be applied in a child custody proceeding and do not prevent the department from providing a higher standard of protection to the rights of an Indian child, parent, Indian custodian, or Indian child's tribe.~~

(5) ~~It is also the legislature's intent that any department policy manual covering Indian child welfare and any relevant local agreements between individual federally recognized tribes and the department should serve as persuasive guides in the interpretation and implementation of the federal Indian Child Welfare Act, [sections 1 through 20 19], and other relevant state laws.~~

NEW SECTION. Section 3. — Applicability. ~~[Sections 1 through 20 19] apply in all child custody proceedings. Whenever a child custody proceeding involves an Indian child and a conflict exists between~~

1 [sections 1 through 20 19] and Title 40, chapter 6, Title 41, chapter 3 or 4, or Title 42, the provisions of
2 [sections 1 through 20 19] apply.

3

4 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 20 19 16], the following
5 definitions apply:

6 (1) "Active efforts" means affirmative, active, thorough, and timely efforts meeting the requirements
7 of [section 14 13 10] that are intended primarily to maintain or reunite an Indian child with the child's family and
8 that are tailored to the facts and circumstances of the case.

9 (2) "Adoptive placement" means the permanent placement of an Indian child for adoption,
10 including any action resulting in a final decree of adoption.

11 ~~(3) "Best interests of the Indian child" means the use of practices in accordance with the federal~~
12 ~~Indian Child Welfare Act, [sections 1 through 20 19], and other applicable law that are designed to:~~

13 ~~(a) protect the safety, well-being, development, and stability of the Indian child;~~

14 ~~(b) prevent the unnecessary out-of-home placement of the Indian child;~~

15 ~~(c) acknowledge the right of Indian tribes to maintain their existence and integrity in order to~~
16 ~~promote the stability and security of their children and families; and~~

17 ~~(d) recognize the value to the Indian child of establishing, developing, or maintaining a political,~~
18 ~~cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.~~

19 ~~(4)~~(3) (a) "Child custody proceeding" means any state or private proceeding, other than an
20 emergency proceeding, that may culminate in a foster care placement, termination of parental rights,
21 preadoptive placement, or adoptive placement.

22 (b) The term does not include a placement based on:

23 (i) an act that, if committed by an adult, would be considered a crime; or

24 (ii) an award, in a dissolution proceeding, of custody to one of the child's parents.

25 ~~(5)~~(4) "Court of competent jurisdiction" means a court that has jurisdiction over the relevant subject
26 matter under federal, state, or tribal law.

27 ~~(6)~~(5) "Department" means the department of public health and human services provided for in 2-15-
28 2201.

~~(7)~~~~(6)~~ "Foster care placement" means an action removing an Indian child from the child's parent or Indian custodian for temporary placement in a foster home or institution or with a relative, guardian, conservator, or suitable other person under which the parent or Indian custodian may not have the child returned on demand but parental rights have not been terminated.

~~(8)~~~~(7)~~ "Indian" means a person who is a member of an Indian tribe or who is an Alaska Native and a member of a regional corporation as established in 43 U.S.C. 1606.

~~(9)~~~~(8)~~ "Indian child" means an unmarried Indian person who is under 18 years of age and who is:

- (a) a member of an Indian tribe; or
- (b) eligible for membership in an Indian tribe AND IS THE BIOLOGICAL CHILD OF A MEMBER OF AN INDIAN TRIBE.

~~(10)~~~~(9)~~ (a) "Indian child's family" or "extended family member" means an individual defined by the law or custom of the Indian child's tribe as a relative of the Indian child.

(b) If the Indian child's tribe does not identify family members by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, cousin, stepparent, or stepgrandparent. A stepparent or stepgrandparent may be considered a family member even following termination of the marriage.

~~(11)~~~~(10)~~ "Indian child's tribe" means a tribe or tribes in which an Indian child is a member or is determined eligible for membership as provided in [section 6 5].

~~(12)~~~~(11)~~ "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law has legal or temporary physical custody of an Indian child or to whom the parent has transferred temporary care, physical custody, and control of the Indian child.

~~(13)~~~~(12)~~ (a) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians.

(b) The term includes an Alaska Native village as defined in 43 U.S.C. 1602.

~~(14)~~~~(13)~~ "Member" or "membership" means a determination by an Indian tribe that an individual is a member of or eligible for membership in that Indian tribe.

~~(15)~~~~(14)~~ (a) "Parent" means a biological parent of an Indian child or an individual who has lawfully

1 adopted an Indian child, including adoptions made as tribal customary adoptions.

2 (b) The term does not include an unwed father whose paternity has not been acknowledged or
3 established under Title 40, chapter 6, part 1, or the applicable laws of another state.

4 ~~(16)~~(15) "Preadoptive placement" means the temporary placement of an Indian child in a foster home or
5 institution after the termination of parental rights but before or in lieu of adoptive placement.

6 ~~(17)~~ "Qualified expert witness" means a person who meets the provisions of [section 13 12].

7 ~~(18)~~(16) "Termination of parental rights" means any action resulting in the termination of the parent-child
8 relationship.

9 ~~(19)~~(17) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child
10 custody proceedings. The term includes but is not limited to a federal court of Indian offenses, a court
11 established and operated under the code or custom of an Indian tribe, and an administrative body of an Indian
12 tribe vested with authority over child custody proceedings.

13 ~~(20)~~ (a) " Tribal customary adoption" means adoption or another process through the tribal custom,
14 traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and
15 through which the nonparent is vested with the rights, privileges, and obligations of a legal parent.

16 ~~(b)~~ Termination of the parent-child relationship between the Indian child and the biological parent
17 is not required to recognize a tribal customary adoption.

18
19 **NEW SECTION. Section 4. Determination of Indian status -- confidentiality of records.** (1) (a) A
20 party seeking the foster care placement of, termination of parental rights over, or adoption of a child shall use
21 due diligence to determine whether the child is an Indian child. The inquiry must be made in consultation with:

22 (i) the child's parent or parents;
23 (ii) an individual who has custody of the child or with whom the child resides;
24 (iii) any other individual who reasonably may be expected to have information regarding the child's
25 possible membership or eligibility for membership in an Indian tribe; and

26 (iv) any Indian tribe of which the child may be a member or may be eligible for membership. The
27 consultation with a tribe must be made by contacting the tribe in writing.

28 (b) The inquiries required under this subsection (1) must be documented in the record.

(2) Preliminary contacts for the purpose of using due diligence to determine a child's possible Indian status do not constitute legal notice as required by [section 8 7].

(3) A court shall ask each participant in an emergency proceeding or voluntary or involuntary child custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry must be made at the commencement of the proceeding and all responses must be on the record. The court shall instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(4) If there is reason to know the child is an Indian child but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall:

~~(a) —confirm, by way of a report, declaration, or testimony included in the record, that the department or other party used due diligence to identify and work with all tribes of which there is reason to know the child may be a member or eligible for membership to verify whether the child is a member or eligible for membership; and~~

~~(b) —treat the child as an, unless and until it is determined on the record that the child does not meet the definition of an Indian child.~~

(5) A court, on conducting the inquiry required in subsection (3), has reason to know that a child involved in an emergency proceeding or child custody proceeding may be an Indian child if:

(a) any participant in the proceeding, officer of the court involved in the proceeding, Indian tribe, Indian organization, or agency informs the court that:

(i) the child is an Indian child; or

(ii) it has discovered information indicating that the child is an Indian child;

(b) the child who is the subject of the proceeding gives the court reason to know the child is an Indian child;

(c) the court is informed that the residence or domicile of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(d) the court is informed that the child is or has been a ward of a tribal court;

(e) the court is informed that either of the parents or the child possesses an identification card indicating membership in an Indian tribe; or

(f) the court determines from additional information provided that the child may be an Indian child.

(6) (a) When seeking verification of a child's Indian status during a voluntary proceeding, the court shall keep relevant documents pertaining to the inquiry confidential and under seal if a consenting parent expresses either orally or in writing a desire for anonymity. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with [sections 1 through ~~20~~ 19 ~~16~~], including the obligation to verify whether the child is an Indian child.

(b) A tribe receiving information related to an inquiry of a child's status as an Indian child must keep documents and information confidential.

(7) ~~(a)~~ A written determination by an Indian tribe regarding the child's status as an Indian child is conclusive that the child is an Indian child.

~~(b) If a tribe provides no response to the department's written request for verification of the child's membership status, the nonresponse does not constitute evidence that the child is not a member of or eligible for membership in the tribe.~~

~~(8) If a child has been determined not to be an Indian child, any party to the proceeding or an Indian tribe that subsequently determines the child is a member or is eligible for membership may move, during the pendency of a child custody proceeding to which the federal Indian Child Welfare Act or [sections 1 through 20 19] applies, for redetermination of the child's Indian status based on:~~

~~(a) new evidence;~~

~~(b) a redetermination by the child's tribe;~~

~~(c) newly conferred federal recognition of the tribe; or~~

~~(d) a prior mistaken determination on the part of the tribe.~~

NEW SECTION. Section 5. Determination of Indian tribe. (1) If the Indian child is a member of or eligible for membership in only one tribe, that tribe must be designated as the Indian child's tribe.

(2) If the Indian child meets the definition of Indian child through more than one tribe, deference must be given to the tribe in which the Indian child is already a member, unless otherwise agreed to by the tribes.

(3) (a) If the Indian child meets the definition of Indian child through more than one tribe because

the child is a member in more than one tribe or the child is not a member of but is eligible for membership in more than one tribe, the court shall provide the opportunity in any involuntary child custody proceeding for the tribes to determine which tribe should be designated as the Indian child's tribe.

(b) If the tribes are able to reach an agreement, the court shall designate the agreed-on tribe as the Indian child's tribe.

(c) If the tribes are unable to reach an agreement, for the purposes of [sections 1 through ~~20~~ 19 16] the court shall designate as the child's tribe the tribe with which the child has the more significant contacts as the Indian child's tribe. In making the designation, the court shall consider:

- (i) the preference of the parents for membership of the child;
- (ii) the length of the child's past residence or domicile on or near the reservation of each tribe;
- (iii) the tribal membership of the child's custodial parent or Indian custodian;
- (iv) the interest asserted by each tribe in the child custody proceeding;
- (v) whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and
- (vi) self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify with a tribe.

(4) A determination of the Indian child's tribe for the purposes of [sections 1 through ~~20~~ 19 16] does not constitute a determination for any other purpose.

NEW SECTION. Section 6. Jurisdiction -- transfer of jurisdiction. (1) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe unless:

(a) the tribe has consented to the state's concurrent jurisdiction PURSUANT TO PUBLIC LAW 280 OR 25 U.S.C. 1919;

(b) the tribe has expressly declined to exercise its exclusive jurisdiction; or

(c) the state is exercising emergency jurisdiction in compliance with [section ~~16~~ 15 12].

(2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding, the Indian tribe may retain exclusive jurisdiction regardless of the residence or domicile of the child.

(3) Except as provided in ~~subsections (4) and (6)~~ SUBSECTION (5), in a child custody proceeding involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe on the motion of any of the following:

- (a) either of the Indian child's parents;
- (b) the Indian child's Indian custodian; OR
- (c) the Indian child's tribe; ~~or~~
- ~~(d) the Indian child if the child is 12 years of age or older.~~

~~(4) A tribe to which jurisdiction is being transferred shall respond within 75 days to a motion or order transferring jurisdiction to the tribal court. A failure of the tribe to respond within 75 days must be construed as a declination to accept the transfer of the case.~~

~~(5)~~(4) If the Indian child's tribe has not formally intervened, the moving party shall serve a copy of the motion and all supporting documents on the tribal court to which the moving party seeks transfer.

~~(6)~~(5) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court may not transfer the proceeding.

~~(7) (a) If a state court believes or any party asserts that good cause to deny transfer exists, the reasons for that belief or assertion must be provided orally or in writing on the record and to the parties to the child custody proceeding. Any party to the child custody proceeding must have the opportunity to provide the court with the reasons that good cause exists to deny transfer of the proceeding.~~

~~(b) In determining whether good cause exists, the court may not consider:~~

~~(i) whether the child custody proceeding is at an advanced stage;~~
~~(ii) whether there have been prior proceedings involving the child for which no petition to transfer was filed;~~

~~(iii) whether transfer could affect the placement of the child;~~

~~(iv) the child's cultural connections with the tribe or its reservation; or~~

~~(v) socioeconomic conditions or any negative perception of the tribal or bureau of Indian affairs social services or judicial systems.~~

~~(c) If the court denies transfer of jurisdiction, the court shall state its reasons for the denial orally on~~

1 ~~the record or in a written order.~~

2 ~~(8)(6)~~ (a) Following entry of an order transferring jurisdiction to the Indian child's tribe and pending
3 receipt of a tribal court order accepting jurisdiction, the state court:

4 (i) may conduct additional hearings and enter orders that are in the best interests of the child and
5 strictly comply with the requirements of the federal Indian Child Welfare Act and [sections 1 through ~~20~~ 19 16];
6 and

7 (ii) may not enter a final order in a child custody proceeding, except an order dismissing the
8 proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the
9 child was removed.

10 (b) On receipt of an order from a tribal court accepting jurisdiction, the court shall:

11 (i) dismiss the child custody proceeding with prejudice; and

12 (ii) expeditiously provide the tribal court with all records related to the proceeding, including but not
13 limited to the pleadings and any court record. The state court shall work with the tribal court to ensure the
14 transfer of the custody of the Indian child and the proceeding is accomplished smoothly and in a way that
15 minimizes the disruption of services to the family.

16 ~~(9)(7)~~ If the Indian child's tribe accepts jurisdiction, the state court shall enter an order relieving the
17 office of the state public defender and any public defender assigned pursuant to 41-3-425 and 47-1-104 from
18 further representation.

19 ~~(10)(8)~~ If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the
20 order transferring jurisdiction and proceed with adjudication of the child custody proceeding in compliance with
21 the federal Indian Child Welfare Act, [sections 1 through ~~20~~ 19 16], and any applicable state-tribal agreement.

22
23 **NEW SECTION. Section 7. Notice.** (1) The petitioning party shall provide notice of the initial petition
24 filed in an involuntary child custody proceeding and a petition seeking termination of parental rights when the
25 petitioning party knows or has reason to know that the child is or may be an Indian child. Notice must be
26 provided as required in subsection (2) to:

27 (a) the Indian child's parent or Indian custodian; and

28 (b) the child's tribe or tribes.

(2) (a) Notice to the tribe must be made by certified mail, return receipt requested, and must meet the requirements of subsection (4). The notice must be sent to the person designated in the most current Federal Register as the designated tribal agent for service of notice for the purposes of the federal Indian Child Welfare Act. The petitioning party shall file the return receipt with the court as proof of notice.

(b) Notice to the parent or Indian custodian must be made by personal service, or alternative means as provided in 41-3-422 if personal service cannot be accomplished, and must meet the requirements of subsection (4).

(c) If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice must be given to the secretary of the U.S. department of the interior by certified mail, return receipt requested, in accordance with the provisions of 25 CFR, part 23.

(d) Service of all other petitions, other than the initial petition and a petition for termination of parental rights, must be served on the tribe by first-class mail unless otherwise directed by the tribe's designated agent for notice.

(e) When notice of the initial petition and a petition for termination of parental rights to the parent or Indian custodian is required under this subsection (2), personal service, and alternative means of personal service when personal service cannot be accomplished, as provided in 41-3-422, takes the place of certified mail with return receipt requested.

(3) A foster care placement or a termination of parental rights proceeding may not be held until at least 10 days after receipt of the notice by the parent or Indian custodian, the tribe, and, if applicable, the secretary. The parent, Indian custodian, or tribe shall, on request, be granted up to 20 additional days to prepare for the proceeding. The 10-day notice requirement does not limit a court's ability to hold an emergency protective services hearing pursuant to 41-3-306.

(4) Notice provided under this section must be in clear and understandable language and include the following:

(a) the child's name, date of birth, and place of birth;

(b) all known names of the child's parents, including maiden, married, and former names or aliases;

(c) the parents' dates of birth, places of birth, and tribal enrollment numbers, if known;

(d) the names, dates of birth, places of birth, and tribal enrollment information of other direct lineal ancestors of the child, if known;

(e) the name of each Indian tribe in which the child is a member or may be eligible for membership if a biological parent is a member; and

(f) a copy of the petition, complaint, or other document by which the child custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing.

NEW SECTION. Section 9. Tribal participation in proceedings -- intervention. (1) A state court shall allow a designated tribal representative to represent a tribe in all proceedings under [sections 1 through 20], in person or by electronic means. The court may not require that the tribal representative be an attorney or that the person be licensed in Montana if the person is an attorney.

(2) — An attorney may appear in a proceeding involving an Indian child under [sections 1 through 20] without complying with any rule of the Montana supreme court regarding admission to practice in the state or paying the associated fees or assessments related to admission to practice if the attorney is:

(a) — permitted to practice in another state, tribe, or territory of the United States or District of Columbia; and

(b) — in good standing with the bar association of that state, tribe, or territory.

(3) — The Indian child's tribe or tribes may file as an intervenor at any point in a child custody proceeding involving the Indian child.

NEW SECTION. Section 9. Full faith and credit. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe that are applicable to Indian child custody proceedings.

NEW SECTION. Section 8. Right to counsel. In a child custody proceeding under [sections 1 through 20 ~~19~~ 16] in which the court determines that the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian has the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child pursuant to 41-3-425.

NEW SECTION. Section 9. Right of access to evidence. Each party to a child custody proceeding involving an Indian child has the right to examine all reports or other documents filed with the court on which any decision with respect to the proceeding may be based.

NEW SECTION. Section 12. — Qualified expert witness — requirements — prohibitions. (1) A qualified expert witness is an individual who provides testimony in a child custody proceeding under [sections 1 through 20 19]. The purpose of the testimony is to assist a court in determining whether the continued custody of the child by or the return of the child to the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The parties may not waive the requirement for qualified expert witness testimony.

(2) — The petitioning party shall consult with the Indian child's tribe on the selection of the qualified expert witness, including asking whether the tribe has a list of preferred qualified expert witnesses. To the extent possible, the petitioning party shall use an individual preferred by the tribe.

(3) — A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and must be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe.

(4) — (a) If the petitioner is the department, the child protection specialist assigned to the case and the child protection specialist's supervisor may not testify as qualified expert witnesses in the case.

(b) — Nothing in this subsection (4) may be construed as barring:

(i) — the child protection specialist or the child protection specialist's supervisor from testifying as an expert witness for other purposes in a proceeding under [sections 1 through 20 19]; or

(ii) — the petitioner or another party in a proceeding under [sections 1 through 20 19] from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court, including the determination of whether the continued custody of the Indian child by or return of the Indian child to the parent, parents, or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

NEW SECTION. Section 10. Active efforts. (1) Any party seeking to effect a foster care placement

1 of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts
2 have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of
3 the Indian family and that the efforts have proven unsuccessful.

4 (2) The court shall make written findings that the petitioning party has provided active efforts and
5 the efforts must be documented in detail in the record.

6 (3) If the department is involved in the child custody proceeding, active efforts must include
7 assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or
8 developing the resources necessary to satisfy the case plan.

9 (4) (a) To the maximum extent possible, active efforts must be provided in a manner consistent
10 with the prevailing social and cultural conditions and way of life of the Indian child's tribe and conducted in
11 partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians,
12 and tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include but are
13 not limited to:

14 (i) conducting a comprehensive assessment of the circumstances of the Indian child's family, with
15 a focus on safe reunification as the most desirable goal;

16 (ii) identifying appropriate services and helping the parents to overcome barriers, including actively
17 assisting the parents in obtaining the services;

18 (iii) identifying, notifying, and inviting representatives of the Indian child's tribe to participate in
19 providing support and services to the Indian child's family and in family team meetings, permanency planning,
20 and resolution of placement issues;

21 (iv) conducting or causing to be conducted a diligent search for the Indian child's extended family
22 members and contacting and consulting with extended family members to provide family structure and support
23 for the Indian child and the Indian child's parents;

24 (v) offering and employing all available and culturally appropriate family preservation strategies
25 and facilitating the use of remedial and rehabilitative services provided by the child's tribe;

26 (vi) taking steps to keep siblings together whenever possible;

27 (vii) supporting regular visits with parents or Indian custodians in the most natural setting possible
28 as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure

1 the health, safety, and welfare of the child;

2 (viii) identifying community resources, including housing, financial, transportation, mental health,

3 substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the

4 child's family, in accessing and using the resources;

5 (ix) monitoring progress and participation in services;

6 (x) considering alternative ways to address the needs of the Indian child's parents and, when

7 appropriate, the family, if the optimum services do not exist or are not available; and

8 (xi) providing postreunification services and monitoring.

9 (b) Referral to a service or program does not constitute an active effort if the referral was the sole

10 action taken.

11

12 **NEW SECTION. Section 11. Evidentiary requirements.** (1) A court may not order a foster care

13 placement of an Indian child unless:

14 (a) the petitioning party has provided clear and convincing evidence that active efforts were made

15 to provide remedial services and rehabilitative programs to prevent the breakup of an Indian family and that the

16 efforts were unsuccessful; and

17 (b) clear and convincing evidence is presented, including the testimony of one or more qualified

18 expert witnesses, to demonstrate that continued custody by the child's parent or Indian custodian is likely to

19 result in serious emotional or physical damage to the child.

20 (2) The court may not terminate parental rights of the parents of an Indian child unless evidence

21 beyond a reasonable doubt is presented that:

22 (a) active efforts were made to prevent the breakup of the Indian family and the efforts were

23 unsuccessful; and

24 (b) continued custody of the child by the child's parent or Indian custodian is likely to result in

25 serious emotional or physical damage to the child. The evidence must include testimony of one or more

26 qualified expert witnesses.

27 ~~(3) For the purposes of this section, any harm that may result from interfering with the bond or~~

28 ~~attachment that may have formed between the child and a foster care provider may not be the sole basis or~~

~~primary reason for continuing a foster care placement or terminating the parental rights of a parent of an Indian child.~~

~~(4)(3)~~ (a) Evidence required under this section must show a causal relationship between the specific conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the child who is the subject of the child custody proceeding.

(b) Evidence showing only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

NEW SECTION. Section 12. Emergency removal of Indian child. (1) Nothing in [sections 1 through ~~20 19 16~~] may be construed to prevent the department from removing an Indian child from the Indian child's parent or Indian custodian or prevent the emergency placement of the Indian child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the Indian child.

(2) An emergency removal or placement of an Indian child under state law must terminate immediately when the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(3) A state court shall:

(a) make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

(b) promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended;

(c) at any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child; and

(d) immediately terminate or direct the department to terminate the emergency removal if the court or department possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(4) An emergency proceeding may be terminated by any of the following actions:

- 1 (a) initiation of a child custody proceeding subject to the provisions of the federal Indian Child
2 Welfare Act and [sections 1 through 20 ~~19~~ 16];
- 3 (b) transfer of the child to the jurisdiction of the appropriate Indian tribe; or
4 (c) restoring the child to the parent or Indian custodian.
- 5 (5) A petition for a court order authorizing the emergency removal or placement, or its
6 accompanying documents, must contain a statement of the risk of imminent physical damage or harm to the
7 Indian child, any evidence that the emergency removal or placement continues to be necessary to prevent the
8 damage or harm, and if available:
- 9 (a) the full name, age, and last known address of the Indian child;
10 (b) the name and address of the child's parents and Indian custodians, if any;
11 (c) the steps taken to provide notice to the child's parents, Indian custodians, and tribe about the
12 emergency proceeding;
- 13 (d) if the child's and Indian custodians are unknown, a detailed explanation of the efforts made to
14 locate and contact the individuals, including contact with the appropriate bureau of Indian affairs regional
15 director;
- 16 (e) the residence or the domicile of the Indian child;
17 (f) if either the residence or the domicile of the Indian child is believed to be on a reservation or in
18 an Alaska Native village, the name of the tribe affiliated with that reservation or village;
- 19 (g) the tribal affiliation of the child and of the parents or Indian custodians;
20 (h) a specific and detailed account of the circumstances that led the agency responsible for the
21 emergency removal of the child to remove the child;
- 22 (i) if the child is believed to reside or be domiciled on a reservation where the tribe exercises
23 exclusive jurisdiction over child custody matters, a statement of the efforts made and being made to contact the
24 tribe and transfer the child to the tribe's jurisdiction; and
- 25 (j) a statement of the efforts made to assist the parents or Indian custodians so the Indian child
26 may be safely returned to the parents or Indian custodians.
- 27 (6) Contact made to provide notice of an emergency removal and reported pursuant to subsection
28 (5)(c) does not constitute the notice required under [section 8] for the purposes of subsequent dependency,

1 termination of parental rights, or adoption proceedings.

2 (7) An emergency proceeding regarding an Indian child may not be continued for more than 30
3 days unless the court determines that:

4 (a) restoring the child to the parent or Indian custodian would subject the child to imminent
5 physical damage or harm;

6 (b) the court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian
7 tribe; and

8 (c) it has not been possible to initiate a child custody proceeding.

9

10 NEW SECTION. Section 13. Consent. (1) At an involuntary foster care placement hearing, a
11 stipulation or consent by the parent or Indian custodian is not valid unless the court certifies on the record that
12 the terms and consequences of the stipulation or consent were fully explained in detail and were fully
13 understood by the parent or Indian custodian. The court shall certify on the record that the parent or Indian
14 custodian fully understood the explanation in English or that the explanation was translated into a language that
15 the parent or Indian custodian understood.

16 (2) In a voluntary proceeding for foster care placement or termination of parental rights, consent by
17 a parent or Indian custodian is not valid unless the consent is:

18 (a) executed in writing and recorded before a judge of a court of competent jurisdiction; and

19 (b) accompanied by the judge's written certificate that:

20 (i) the terms and consequences of the consent were fully explained in detail and were fully
21 understood by the parent or Indian custodian; and

22 (ii) the parent or Indian custodian fully understood the explanation in English or that the
23 explanation was translated into a language that the parent or Indian custodian understood.

24 (3) Voluntary consent for release of custody given prior to or within 10 days after the birth of an
25 Indian child may not be considered valid.

26 (4) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care
27 placement at any time. On withdrawal of consent, the Indian child must be returned to the parent or Indian
28 custodian.

(5) In a voluntary proceeding for termination of parental rights to or adoptive placement of an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an order terminating parental rights or a final decree of adoption, and the Indian child must be returned to the parent.

(6) (a) After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption on the grounds that consent was obtained through fraud or duress. On a finding that consent was obtained through fraud or duress, the court shall vacate the decree and return the Indian child to the parent.

(b) An adoption that has been effective for at least 2 years may not be invalidated under this section unless otherwise allowed by law.

NEW SECTION. Section 14. Improper removal of Indian child. If a petitioner in a child custody proceeding under [sections 1 through ~~20~~ 19 16] has improperly removed an Indian child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the Indian child to the parent or Indian custodian unless returning the Indian child to the parent or Indian custodian would subject the Indian child to substantial and immediate danger or threat of substantial or immediate danger.

NEW SECTION. Section 15. Removal of Indian child from adoptive or foster care placement. (1) If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the Indian child, the biological parent or prior Indian custodian may petition to have the Indian child returned to the custody of the parent or Indian custodian. The court shall grant the request unless there is a showing by clear and convincing evidence that return of custody to the biological parent or Indian custodian is not in the best interests of the child.

(2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home for the purposes of further foster care or a preadoptive or adoptive placement, the placement must be made in accordance with [sections 1 through ~~20~~ 19 16] unless an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

1

2 **NEW SECTION. Section 16. Placement preferences.** (1) When an emergency removal, foster care
3 placement, or preadoptive placement of an Indian child is necessary, the petitioning party shall, in the absence
4 of good cause to the contrary, place the Indian child in the least restrictive setting that:

- 5 (a) most closely approximates a family situation;
6 (b) is in reasonable proximity to the Indian child's home; and
7 (c) allows for the Indian child's special needs, if any, to be met.

8 (2) In a foster care or preadoptive placement, preference must be given, in the absence of good
9 cause to the contrary, to the Indian child's placement with one of the following, in descending order of priority:

- 10 (a) an Indian child's extended family member;
11 (b) a foster home licensed, approved, or specified by the Indian child's tribe;
12 (c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
13 (d) an institution for children approved by an Indian tribe or operated by an Indian organization that
14 has a program suitable to meet the Indian child's needs.

15 (3) In the absence of good cause to the contrary, in an adoptive or other permanent placement of
16 an Indian child, preference must be given to a placement with one of the following, in descending order of
17 priority:

- 18 (a) extended family members;
19 (b) an Indian family of the same tribe as the Indian child;
20 ~~(c) an Indian family that is of a similar culture to the Indian child's tribe; or~~
21 ~~(d)~~(c) another Indian family.

22 (4) Notwithstanding the placement preferences listed in subsections (2) and (3), if a different order
23 of placement preference is established by the Indian child's tribe, the court or agency implementing the
24 placement shall follow the order of preference established by the tribe if the placement is in the least restrictive
25 setting appropriate to the particular needs of the Indian child and within reasonable proximity to the child's
26 home.

27 (5) When appropriate, the preference of the Indian child or the child's parent must be considered
28 by the court.

(6) The standards to be applied in meeting the preference requirements of this section must be the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside or with which the parent or extended family members maintain social and cultural ties.

(7) Nothing in this section prevents the department or the court from placing an Indian child with a parent to effectuate a permanency plan regardless of the parent's relationship to the Indian child's tribe.

(8) (a) If any party asserts that good cause to not follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child custody proceeding and the court.

(b) The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:

(i) the request of one or both of the Indian child's parents on attestation that they have reviewed the placement options, if any, that comply with the order of preference provided for in subsections (2) and (3);

(ii) the request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

(iii) the presence of a sibling attachment that can be maintained only through a particular placement;

(iv) the extraordinary physical, mental, or emotional needs of the Indian child, including but not limited to specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; or

(v) the unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but no suitable placement was found. For the purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

- (d) A placement may not depart from the preferences based:-
- (i) ~~on the socioeconomic status of any placement relative to another placement; or~~
- (ii) ~~solely on ordinary bonding or attachment.~~

Section 17. Section 40-6-405, MCA, is amended to read:

"40-6-405. Surrender of newborn to emergency services provider -- temporary protective

custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

(2) The emergency services provider shall make a reasonable effort to do all of the following:

- (a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;
- (b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;
- (c) if possible, ascertain whether the newborn has a tribal affiliation and, if so, ascertain relevant information pertaining to any Indian heritage of the newborn;
- (d) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:
- (i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;
- (ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;
- (iii) the parent may not receive personal notice of the court proceedings begun by the department;
- (iv) information that the parent provides to an emergency services provider will not be made public;
- (v) a parent may contact the department for more information and counseling; and

(vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the federal
Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20 19 16].

(3) After providing a parent with the information described in subsection (1), if possible, an
emergency services provider shall make a reasonable effort to:

(a) encourage the parent to provide any relevant family or medical information, including
information regarding any tribal affiliation;

(b) provide the parent with information that the parent may receive counseling or medical attention;

(c) inform the parent that information that the parent provides will not be made public;

(d) ask the parent for the parent's name;

(e) inform the parent that in order to place the newborn for adoption, the state is required to make
a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the
parent to identify the other parent;

(f) inform the parent that the department can provide confidential services to the parent; and

(g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a
hearing to terminate parental rights."

Section 18. Section 40-6-407, MCA, is amended to read:

**"40-6-407. Assumption of care, custody, and control by department -- placement of child --
presumptions -- Montana birth certificate.** (1) Upon receipt of notice under 40-6-406, the department shall:

(a) immediately assume the care, control, and temporary protective custody of the newborn;

(b) if a parent is known and willing, immediately meet with the parent;

(c) make a temporary placement of the newborn;

(d) immediately request assistance from law enforcement officials to investigate and determine,
through the national center for missing and exploited children and any other national and state missing children
information programs, whether the newborn is a missing child;

(e) not later than 48 hours after assuming the care, control, and temporary protective custody of
the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, and, if applicable,
[sections 1 through 20 19 16], requesting appropriate relief with the goal of achieving permanent placement for

1 the newborn at the earliest possible date; and

2 (f) within 30 days, make reasonable efforts to identify and locate a parent who did not surrender
3 the newborn. If the identity and address of that parent are unknown, the department shall provide notice by
4 publication in a newspaper of general circulation in the county where the newborn was surrendered.

5 (2) The department, after assuming the care, custody, and control of a newborn under subsection
6 (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not required
7 to search for relatives of the newborn as a placement or permanency option or to implement other placement
8 requirements that give preference to relatives if the department does not have information as to the identity of
9 the newborn or either of the newborn's parents. The department shall place the newborn with prospective
10 adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding
11 the newborn's medical history, date of birth, or age if the department has that information.

12 (3) A newborn surrendered under 40-6-405 is presumed to have been born in Montana unless the
13 biological parent otherwise informs the department or the emergency services provider to whom the newborn is
14 surrendered.

15 (4) A Montana birth certificate may be issued based on the presumption of birth in Montana as
16 provided in subsection (3). A birth certificate issued to a newborn surrendered under 40-6-405 must provide a
17 date of birth based on either the actual date of birth, if known, or on the date of birth determined by the
18 physician who performs the medical examination of the newborn under 40-6-406."

19

20 **Section 19.** Section 40-6-413, MCA, is amended to read:

21 **"40-6-413. Custody action -- order.** Based on the court's finding of the newborn's best interest under
22 40-6-412, the court may issue an order:

23 (1) granting legal or physical custody, or both, of the newborn to the parent and either retaining or
24 relinquishing jurisdiction; or

25 (2) denying custody of the newborn to the parent and referring the matter to the department or
26 county attorney for proceedings under Title 41, chapter 3, and, if applicable, [sections 1 through 20 19 16]."

27

28 **Section 20.** Section 40-6-414, MCA, is amended to read:

1 **"40-6-414. Presumption of waiver of parental rights -- department to file petition.** (1) ~~A-Except as~~
2 provided in ~~[section 17 16 13]~~, a parent who surrenders a newborn under 40-6-405 and who does not file a
3 custody action under 40-6-411 is presumed to have knowingly waived the parent's parental rights to the
4 newborn.

5 (2) If a custody action is not filed under 40-6-411 or if the parent is denied custody of the newborn
6 under 40-6-413, the department shall file a petition under Title 41, chapter 3, part 4, or, if applicable, [sections 1
7 through 20 19 16], requesting appropriate relief with the goal of achieving permanent placement for the
8 newborn at the earliest possible date."

9
10 **Section 21.** Section 40-6-1001, MCA, is amended to read:

11 **"40-6-1001. Petition for termination -- criteria -- process.** (1) A district court may order a
12 termination of the parent-child legal relationship after the filing of a petition pursuant to this section alleging the
13 factual grounds for termination as provided for in subsection (2).

14 (2) Grounds for termination pursuant to this section exist when the parent of a child:

15 (a) is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a
16 delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse
17 occurred and, as a result of the sexual intercourse, the child is born; or

18 (b) at a fact-finding hearing is found by clear and convincing evidence, except as provided in the
19 federal Indian Child Welfare Act and [sections 1 through 20 19 16], if applicable, to have committed an act of
20 sexual intercourse without consent, sexual assault, or incest that caused the child to be conceived.

21 (3) The court's order must state the reasons for the decision.

22 (4) The victim of the crime or act may file a petition pursuant to this section. If the victim is a minor,
23 the victim's parent or guardian may file a petition on the victim's behalf.

24 (5) The respondent to the petition has the right to counsel in all proceedings held pursuant to the
25 petition.

26 (6) Before termination of the parent-child legal relationship may be ordered, the court shall
27 determine whether the provisions of 40-6-1002 and 40-6-1003 have been followed.

28 (7) There is no right to a jury trial at proceedings held to consider the termination of a parent-child

1 legal relationship.

2 (8) (a) An order for the termination of the parent-child legal relationship divests the child and the
3 parent of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in
4 Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except:

5 (i) the right of the child to inherit from the parent; and

6 (ii) that nothing in this section may be construed to relieve the parent whose rights are terminated
7 as provided in this part of any child support obligations as provided in Title 40, chapters 4 and 5.

8 (b) An order or decree entered pursuant to this part may not disentitle a child to any benefit due to
9 the child from a third person, including but not limited to an Indian tribe, an agency, a state, or the United
10 States."

11

12 **Section 22.** Section 40-7-135, MCA, is amended to read:

13 **"40-7-135. Application to Indian tribes.** (1) A child custody proceeding that pertains to an Indian
14 child as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4 3] is not subject to
15 this chapter to the extent that it is governed by the federal Indian Child Welfare Act or [sections 1 through 20 19
16 16].

17 (2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of
18 applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, 40-7-134 through 40-
19 7-140, and part 2 of this chapter.

20 (3) A child custody determination made by a tribe under factual circumstances in substantial
21 conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this
22 chapter."

23

24 **Section 23.** Section 41-3-102, MCA, is amended to read:

25 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

26 (1) (a) "Abandon", "abandoned", and "abandonment" mean:

27 (i) leaving a child under circumstances that make reasonable the belief that the parent does not
28 intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare;

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(C) any form of child sex trafficking or human trafficking.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act ~~is or~~ [sections 1 through 20 19 16] are applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Child protection specialist" means an employee of the department who investigates allegations of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

(9) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(10) "Department" means the department of public health and human services provided for in 2-15-2201.

(11) "Family engagement meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(12) "Indian child" ~~means any unmarried person who is under 18 years of age and who is either:~~

1 ~~(a) a member of an Indian tribe; or~~

2 ~~(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe~~

3 has the meaning provided in [section 4 3].

4 (13) "Indian child's tribe" means:

5 ~~(a) the Indian tribe in which an Indian child is a member or eligible for membership; or~~

6 ~~(b) in the case of an Indian child who is a member of or eligible for membership in more than one~~

7 ~~Indian tribe, the Indian tribe with which the Indian child has the more significant contacts~~ has the meaning

8 provided in [section 4 3].

9 (14) "Indian custodian" means ~~any Indian person who has legal custody of an Indian child under~~

10 ~~tribal law or custom or under state law or to whom temporary physical care, custody, and control have been~~

11 ~~transferred by the child's parent~~ has the meaning provided in [section 4 3].

12 (15) "Indian tribe" means ~~any Indian tribe, band, nation, or other organized group or community of~~

13 ~~Indians recognized by:~~

14 ~~(a) the state of Montana; or~~

15 ~~(b) the United States secretary of the interior as being eligible for the services provided to Indians or~~

16 ~~because of the group's status as Indians, including any Alaskan native village as defined in federal law~~ has the

17 meaning provided in [section 4 3].

18 (16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-

19 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person

20 who is 18 years of age or older.

21 (17) "Parent" means a biological or adoptive parent or stepparent.

22 (18) "Parent-child legal relationship" means the legal relationship that exists between a child and the

23 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been

24 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

25 (19) "Permanent placement" means reunification of the child with the child's parent, adoption,

26 placement with a legal guardian, placement with a fit and willing relative, or placement in another planned

27 permanent living arrangement until the child reaches 18 years of age.

28 (20) "Physical abuse" means an intentional act, an intentional omission, or gross negligence

1 resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns,
2 bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or
3 function, or death.

4 (21) "Physical neglect" means either failure to provide basic necessities, including but not limited to
5 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
6 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing
7 the child to be exposed to an unreasonable physical or psychological risk to the child.

8 (22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the
9 parent or other person responsible for the child's welfare:

10 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological
11 abuse or neglect;

12 (ii) commits or allows sexual abuse or exploitation of the child;

13 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child
14 was abused or neglected by a parent or other person responsible for the child's welfare;

15 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate
16 food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or
17 offered financial or other reasonable means to do so;

18 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or
19 welfare by failing to intervene or eliminate the risk; or

20 (vi) abandons the child.

21 (b) The term does not include a youth not receiving supervision solely because of parental inability
22 to control the youth's behavior.

23 (23) (a) "Protective services" means services provided by the department:

24 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

25 (ii) to enable a child alleged to have been abused or neglected who has been removed from the
26 home to safely return to the home; or

27 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances
28 and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, written prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act or [sections 1 through 20 19 16] means:

~~(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;~~

~~(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or~~

~~(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general a person who meets the provisions of [section 13 12]~~

(A) A MEMBER OF THE INDIAN CHILD'S TRIBE WHO IS RECOGNIZED BY THE TRIBAL COMMUNITY AS KNOWLEDGEABLE IN TRIBAL CUSTOMS AS THEY PERTAIN TO A FAMILY ORGANIZATION AND CHILD-REARING PRACTICES;

(B) A LAY EXPERT WITNESS WHO HAS SUBSTANTIAL EXPERIENCE IN THE DELIVERY OF CHILD AND FAMILY SERVICES TO INDIANS AND EXTENSIVE KNOWLEDGE OF PREVAILING SOCIAL AND CULTURAL STANDARDS AND CHILD-REARING PRACTICES WITHIN THE INDIAN CHILD'S TRIBE; OR

(C) A PROFESSIONAL PERSON WHO HAS SUBSTANTIAL EDUCATION AND EXPERIENCE IN PROVIDING SERVICES TO CHILDREN AND FAMILIES AND WHO POSSESSES SIGNIFICANT KNOWLEDGE OF AND EXPERIENCE WITH INDIAN CULTURE, FAMILY STRUCTURE, AND CHILD-REARING PRACTICES IN GENERAL.

(26) "Qualified individual" means a trained professional or licensed clinician who:

(a) has expertise in the therapeutic needs assessment used for placement of youth in a

1 therapeutic group home;

2 (b) is not an employee of the department; and

3 (c) is not connected to or affiliated with any placement setting in which children are placed.

4 (27) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe
5 that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known
6 to the person.

7 (28) "Residential setting" means an out-of-home placement where the child typically resides for
8 longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

9 (29) "Safety and risk assessment" means an evaluation by a child protection specialist following an
10 initial report of child abuse or neglect to assess the following:

11 (a) the existing threat or threats to the child's safety;

12 (b) the protective capabilities of the parent or guardian;

13 (c) any particular vulnerabilities of the child;

14 (d) any interventions required to protect the child; and

15 (e) the likelihood of future physical or psychological harm to the child.

16 (30) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
17 consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a
18 minor, or incest, as described in Title 45, chapter 5.

19 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area
20 while attending to the sanitary or health care needs of that infant or toddler by a parent or other person
21 responsible for the child's welfare.

22 (31) "Sexual exploitation" means:

23 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
24 45-5-601 through 45-5-603;

25 (b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

26 (c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

27 (32) "Therapeutic needs assessment" means an assessment performed by a qualified individual
28 within 30 days of placement of a child in a therapeutic group home that:

(a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool;

(b) determines whether the needs of the child can be met with family members or through placement in a youth foster home or, if not, which appropriate setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals for the child as specified in the child's permanency plan; and

(c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

(33) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(34) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (34), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued

when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(35) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 24. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction and venue. (1) Except as provided in the federal Indian Child Welfare Act or [sections 1 through ~~20~~ 19 16], in all matters arising under this chapter, a person is subject to a proceeding under this chapter and the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court;

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose;

(d) a youth or youth's parent or guardian who resides in Montana;

(e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in Montana.

(2) Venue is proper in the county where a youth is located or has resided within 180 days before the filing of a petition under this part or a county where the youth's parent or guardian resides or has resided within 180 days before the filing of a petition under this part."

Section 25. Section 41-3-109, MCA, is amended to read:

"41-3-109. Proceedings subject to Indian Child Welfare Act ~~Acts~~. If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4 3], the proceeding is subject to the federal Indian Child Welfare Act and [sections 1 through ~~20~~ 19 16]."

Section 26. Section 41-3-128, MCA, is amended to read:

"41-3-128. Certificate requirements -- supervision -- fees. (1) An applicant for certification as a child protection specialist shall:

(a) successfully complete a course in child protection, as defined by the department by rule, which must include training in:

(i) ethics;

(ii) governing statutory and regulatory framework;

(iii) role of law enforcement;

(iv) crisis intervention techniques;

(v) childhood trauma research;

(vi) evidence-based practices for family preservation and strengthening; and

(vii) the provisions of the federal Indian Child Welfare Act, 25 U.S.C. 1902, et seq., and [sections 1 through 20 19 16]; and

(b) demonstrate the applicant's ability to perform all essential functions of the certified child protection role by earning a passing score on a competency examination developed pursuant to 41-3-130.

(2) As a prerequisite to the issuance of a certificate, the department shall require the applicant to submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(3) An applicant who has a history of criminal convictions has the opportunity to demonstrate to the department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny the certificate if it determines that the applicant is not sufficiently rehabilitated."

Section 27. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a

1 misdemeanor.

2 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it.
3 The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue
4 before it.

5 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews,
6 unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to
7 the child or harmful to another person who is a subject of information contained in the records, may be
8 disclosed to the following persons or entities in this state and any other state or country:

9 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian
10 tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect
11 and that otherwise meets the disclosure criteria contained in this section;

12 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
13 family or child who is the subject of a report in the records or to a person authorized by the department to
14 receive relevant information for the purpose of determining the best interests of a child with respect to an
15 adoptive placement;

16 (c) a health or mental health professional who is treating the family or child who is the subject of a
17 report in the records;

18 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in
19 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in
20 the records or other person responsible for the child's welfare, without disclosure of the identity of any person
21 who reported or provided information on the alleged child abuse or neglect incident contained in the records;

22 (e) a child named in the records who was allegedly abused or neglected or the child's legal
23 guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate
24 appointed by the court to represent a child in a pending case;

25 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

26 (g) approved foster and adoptive parents who are or may be providing care for a child;

27 (h) a person about whom a report has been made and that person's attorney, with respect to the
28 relevant records pertaining to that person only and without disclosing the identity of the reporter or any other

1 person whose safety may be endangered;

2 (i) an agency, including a probation or parole agency, that is legally responsible for the
3 supervision of an alleged perpetrator of child abuse or neglect;

4 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project
5 and that is authorized by the department to conduct the research or evaluation;

6 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a
7 family engagement meeting for the purposes of assessing the needs of the child and family, formulating a
8 treatment plan, and monitoring the plan;

9 (l) the coroner or medical examiner when determining the cause of death of a child;

10 (m) a child fatality review team recognized by the department;

11 (n) a department or agency investigating an applicant for a license or registration that is required to
12 operate a youth care facility, day-care facility, or child-placing agency;

13 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
14 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
15 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
16 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
17 children posed by the person about whom the information is sought, as determined by the department.

18 (p) the news media, if disclosure is limited to confirmation of factual information regarding how the
19 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
20 guardian, as determined by the department;

21 (q) an employee of the department or other state agency if disclosure of the records is necessary
22 for administration of programs designed to benefit the child;

23 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if
24 disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act or [sections
25 1 through 20 19 16];

26 (s) a juvenile probation officer who is working in an official capacity with the child who is the
27 subject of a report in the records;

28 (t) an attorney who is hired by or represents the department if disclosure is necessary for the

1 investigation, defense, or prosecution of a case involving child abuse or neglect;

2 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen
3 review board established under Title 41, chapter 3, part 10;

4 (v) a school employee participating in an interview of a child by a child protection specialist, county
5 attorney, or peace officer, as provided in 41-3-202;

6 (w) a member of a county or regional interdisciplinary child information and school safety team
7 formed under the provisions of 52-2-211;

8 (x) members of a local interagency staffing group provided for in 52-2-203;

9 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or

10 (z) a principal of a school or other employee of the school district authorized by the trustees of the
11 district to receive the information with respect to a student of the district who is a client of the department.

12 (4) (a) The records described in subsection (3) must be disclosed to a member of the United
13 States congress or a member of the Montana legislature if all of the following requirements are met:

14 (i) the member receives a written inquiry regarding a child and whether the laws of the United
15 States or the state of Montana that protect children from abuse or neglect are being complied with or whether
16 the laws need to be changed to enhance protections for children;

17 (ii) the member submits a written request to the department requesting to review the records
18 relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the
19 child whose records are to be reviewed, and any other information that will assist the department in locating the
20 records.

21 (iii) before reviewing the records, the member:

22 (A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties
23 for unauthorized release of the information; and

24 (B) receives from the department an orientation of the content and structure of the records.

25 (b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for
26 the member to view but may not be copied, recorded, photographed, or otherwise replicated by the member,
27 and must remain solely in the department's possession. The member must be allowed to view the records in
28 the local office where the case is or was active.

(c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date the written request to review records was received by the department.

(5) (a) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

- (i) the attorney general;
- (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect occurred;
- (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred; or
- (iv) the office of the child and family ombudsman.

(b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

- (i) the death of the child as a result of child abuse or neglect;
 - (ii) a sexual offense, as defined in 46-23-502, against the child;
 - (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502;
- or
- (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

(c) (i) The department shall promptly disclose the results of an investigation to an individual described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the determination that:

- (A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or
 - (B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession of a Schedule I or Schedule II drug that is prohibited by state law.
- (ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted

1 to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have
2 contact with drug paraphernalia as defined in 45-10-101.

3 (d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be
4 released within 5 business days to the county attorney of the county in which the acts that are the subject of a
5 report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual
6 exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a)
7 and to a county or regional interdisciplinary child information and school safety team established pursuant to
8 52-2-211.

9 (ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides
10 confidential services to victims of sexual assault shall report to the department as provided in this part without
11 disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.

12 (iii) When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of
13 sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual
14 exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a
15 request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as
16 described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

17 (6) A school or school district may disclose, without consent, personally identifiable information
18 from the education records of a pupil to the department, the court, a review board, and the child's assigned
19 attorney, guardian ad litem, or special advocate.

20 (7) Information that identifies a person as a participant in or recipient of substance abuse treatment
21 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the
22 consent provisions of the law.

23 (8) The confidentiality provisions of this section must be construed to allow a court of this state to
24 share information with other courts of this state or of another state when necessary to expedite the interstate
25 placement of children.

26 (9) A person who is authorized to receive records under this section shall maintain the
27 confidentiality of the records and may not disclose information in the records to anyone other than the persons
28 described in subsections (3)(a) and (5). However, this subsection may not be construed to compel a family

1 member to keep the proceedings confidential.

2 (10) A news organization or its employee, including a freelance writer or reporter, is not liable for
3 reporting facts or statements made by an immediate family member under subsection (9) if the news
4 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
5 proceeding.

6 (11) This section is not intended to affect the confidentiality of criminal court records, records of law
7 enforcement agencies, or medical records covered by state or federal disclosure limitations.

8 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to
9 this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
10 guardian's attorney must be provided without cost."

11

12 **Section 28.** Section 41-3-301, MCA, is amended to read:

13 " **41-3-301. (Temporary) Emergency protective service.** (1) Any child protection specialist of the
14 department, a peace officer, or the county attorney who has reason to believe any child is in immediate or
15 apparent danger of harm may immediately remove the child and place the child in a protective facility. After
16 ensuring that the child is safe, the department may make a request for further assistance from the law
17 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the
18 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
19 time the placement is made or as soon after placement as possible. Notification under this subsection must:

20 (a) include the reason for removal;

21 (b) include information regarding the option for an emergency protective services hearing within 5
22 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

23 (c) provide contact information for the child protection specialist, the child protection specialist's
24 supervisor, and the office of state public defender; and

25 (d) advise the parents, parent, guardian, or other person having physical or legal custody of the
26 child that the parents, parent, guardian, or other person:

27 (i) has the right to receive a copy of the affidavit as provided in subsection (6);

28 (ii) has the right to attend and participate in an emergency protective services hearing, if one is

requested, and the show cause hearing, including providing statements to the judge;

(iii) may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services; and

(iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.

(2) If a child protection specialist, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in

1 out-of-home care. The department may share information with extended family members for placement and
2 case planning purposes.

3 (6) If a child is removed from the child's home by the department, a child protection specialist shall
4 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
5 copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An
6 abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the
7 emergency removal of a child unless arrangements acceptable to the agency for the care of the child have
8 been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

9 (7) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16], if
10 applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise
11 stipulated by the parties pursuant to 41-3-434.

12 (8) If the department determines that a petition for immediate protection and emergency protective
13 services must be filed to protect the safety of the child, the child protection specialist shall interview the parents
14 of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be
15 filed. The district court may immediately issue an order for immediate protection of the child.

16 (9) The department shall make the necessary arrangements for the child's well-being as are
17 required prior to the court hearing. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

18 **41-3-301. (Effective July 1, 2023) Emergency protective service.** (1) Any child protection specialist
19 of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate
20 or apparent danger of harm may immediately remove the child and place the child in a protective facility. After
21 ensuring that the child is safe, the department may make a request for further assistance from the law
22 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the
23 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
24 time the placement is made or as soon after placement as possible. Notification under this subsection must:

25 (a) include the reason for removal;

26 (b) include information regarding the emergency protective services and show cause hearings and
27 the purpose of the hearings; and

28 (c) advise the parents, parent, guardian, or other person having physical or legal custody of the

child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services.

(2) If a child protection specialist, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-422 within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16], if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the child protection specialist shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 29. Section 41-3-306, MCA, is amended to read:

"41-3-306. (Temporary) Emergency protective services hearing on request -- exceptions. (1) (a)

If requested by the parents, parent, guardian, or other person having physical or legal custody of a child removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5 business days.

(b) The department shall provide notification of the option for the hearing as required under 41-3-301.

(c) A hearing is not required if the child is released prior to the time of the requested hearing.

(2) The hearing may be held in person, by videoconference, or, if no other means are available, by telephone.

(3) The child and the child's parents, parent, guardian, or other person having physical or legal custody of the child must be represented by counsel at the hearing.

(4) If the court determines that continued out-of-home placement is needed, the court shall:

(a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and

(b) review the availability of options for a kinship placement and make recommendations if appropriate.

(5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian, or other person having physical or legal custody of the child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.

(6) If the court determines continued removal is not appropriate, the child must be immediately returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

(7) This section does not apply:

(a) in judicial districts that are holding voluntary prehearing conferences pursuant to 41-3-307; or

(b) to cases involving an Indian child who is subject to the federal Indian Child Welfare Act.

(8) The emergency protective services hearing is an emergency proceeding for the purposes of [sections 1 through 20 19 16] and is not subject to the notice requirements of [sections 1 through 20 19 16].

(Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

41-3-306. (Effective July 1, 2023) Emergency protective services hearing -- exception. (1) (a) A district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to 41-3-301 to determine whether there is probable cause to continue the removal beyond 5 business days.

(b) The department shall provide notification of the hearing as required under 41-3-301.

(c) A hearing is not required if the child is released prior to the time of the required hearing.

(2) The hearing may be held in person, by videoconference, or, if no other means are available, by telephone.

(3) The child and the child's parents, parent, guardian, or other person having physical or legal custody of the child must be represented by counsel at the hearing.

(4) If the court determines that continued out-of-home placement is needed, the court shall:

(a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and

(b) review the availability of options for a kinship placement and make recommendations if appropriate.

(5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.

(6) If the court determines continued removal is not appropriate, the child must be immediately returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

(7) This section does not apply to cases involving an Indian child who is subject to the federal Indian Child Welfare Act.

(8) The emergency protective services hearing is an emergency proceeding for the purposes of [sections 1 through 20 19 16] and is not subject to the notice requirements of [sections 1 through 20 19 16]."

Section 30. Section 41-3-307, MCA, is amended to read:

"41-3-307. (Temporary) Voluntary prehearing conferences -- pilot project counties. (1) The parents, parent, guardian, or other person having physical or legal custody of a child who has been removed from the home pursuant to 41-3-301 may participate in a conference within 5 days of the child's removal and before a show cause hearing held by the court if the court is participating in a pilot project testing the effectiveness of prehearing conferences.

(2) A prehearing conference may be held under this section only if it involves:

(a) the parents, parent, guardian, or other person having physical or legal custody of the child;

(b) the person's legal counsel;

(c) the county attorney's office; and

(d) a department social worker.

(3) To the greatest degree possible using available funding, the meetings must be conducted by

1 an independent and trained facilitator.

2 (4) At a minimum, the meetings must involve discussion of:

3 (a) the child's current placement and options for continued placement if the child remains out of the
4 home;

5 (b) whether other options exist for an in-home safety plan or resource that may allow the child to
6 remain in the home;

7 (c) parenting time schedules; and

8 (d) treatment services for the family.

9 (5) This section does not apply to cases involving an Indian child who is subject to the federal
10 Indian Child Welfare Act or [sections 1 through 20 19 16].

11 (6) This section applies to a district court participating in the prehearing conference pilot project
12 funded by the court improvement program on May 14, 2021, and to any district court in a rural county or
13 multicounty district that chooses to hold conferences in accordance with this section on or after that date.
14 (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)"

15

16 **Section 31.** Section 41-3-422, MCA, is amended to read:

17 **"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter
18 must be initiated by the filing of a petition. A petition may request the following relief:

19 (i) immediate protection and emergency protective services, as provided in 41-3-427;

20 (ii) temporary investigative authority, as provided in 41-3-433;

21 (iii) temporary legal custody, as provided in 41-3-442;

22 (iv) long-term custody, as provided in 41-3-445;

23 (v) termination of the parent-child legal relationship, as provided in 41-3-607;

24 (vi) appointment of a guardian pursuant to 41-3-444;

25 (vii) a determination that preservation or reunification services need not be provided; or

26 (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief
27 that may be required for the best interests of the child.

28 (b) The petition may be modified for different relief at any time within the discretion of the court.

1 (c) A petition for temporary legal custody may be the initial petition filed in a case.

2 (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed
3 in a case if a request for a determination that preservation or reunification services need not be provided is
4 made in the petition.

5 (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions
6 under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county
7 must be accompanied by:

8 (a) an affidavit by the department alleging that the child appears to have been abused or neglected
9 and stating the basis for the petition; and

10 (b) a separate notice to the court stating any statutory time deadline for a hearing.

11 (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing
12 dates.

13 (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
14 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
15 Proceedings under a petition are not a bar to criminal prosecution.

16 (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has
17 the burden of presenting evidence required to justify the relief requested and establishing:

18 (i) probable cause for the issuance of an order for immediate protection and emergency protective
19 services or an order for temporary investigative authority;

20 (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

21 (iii) a preponderance of the evidence for an order of long-term custody; or

22 (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

23 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian
24 Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4 3], the standards of proof required for legal relief under
25 the federal Indian Child Welfare Act and [sections 1 through 20 19 16] apply.

26 (6) (a) Except as provided in the federal Indian Child Welfare Act and [sections 1 through 20 19
27 16], if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child
28 named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a

petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require. If personal service cannot be made upon a putative father, the court may not provide for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the opinion of the court, the interests of justice require counsel to be appointed or assigned.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must state:

(a) the nature of the alleged abuse or neglect and of the relief requested;

(b) the full name, age, and address of the child and the name and address of the child's parents or the guardian or person having legal custody of the child; and

(c) the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1 through 20 19 16], if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that

1 termination of parental rights is in the best interests of the child and the state is required to file a petition to
2 terminate parental rights; and

3 (c) completion of a treatment plan does not guarantee the return of a child.

4 (15) A court may appoint a standing master to conduct hearings and propose decisions and orders
5 to the court for court consideration and action. A standing master may not conduct a proceeding to terminate
6 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
7 in the area of child abuse and neglect laws."

8

9 **Section 32.** Section 41-3-423, MCA, is amended to read:

10 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**

11 **findings -- permanency plan.** (1) (a) The department shall make reasonable efforts to prevent the necessity of
12 removal of a child from the child's home and to reunify families that have been separated by the state.

13 (b) (i) For the purposes of this subsection (1), the term "reasonable efforts" means the department
14 shall in good faith develop and implement voluntary services agreements and treatment plans that are designed
15 to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing
16 voluntary services agreements and treatment plans.

17 (ii) The term includes but is not limited to:

18 (A) written prevention plans;

19 (B) development of individual written case plans specifying state efforts to preserve or reunify
20 families;

21 (C) placement in the least disruptive setting possible with priority given to family placement as
22 provided in 41-3-439;

23 (D) provision of services pursuant to a case plan that is designed to address the parent's treatment
24 and other needs precluding the parent from safely parenting, including but not limited to individual and family
25 therapy, parent education, substance abuse treatment, and trauma-related services; and

26 (E) periodic review of each case to ensure timely progress toward reunification or permanent
27 placement.

28 (c) In determining preservation or reunification services to be provided and in making reasonable

efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act or [sections 1 through 20 19 16], the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person

1 has not been:

2 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or

3 (ii) recorded on the child's birth certificate as the child's father.

4 (4) A judicial finding that preservation or reunification services are not necessary under this section
5 must be supported by clear and convincing evidence.

6 (5) If the court finds that preservation or reunification services are not necessary pursuant to
7 subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable
8 efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must
9 be made to place the child in a timely manner in accordance with the permanency plan and to complete
10 whatever steps are necessary to finalize the permanent placement of the child.

11 (6) If reasonable efforts have been made to prevent removal of a child from the home or to return a
12 child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the
13 permanency plan for the child, the department shall make reasonable efforts to place the child in a timely
14 manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to
15 complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to
16 place a child permanently for adoption or to make an alternative out-of-home permanent placement may be
17 made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including
18 identifying in-state and out-of-state placements, may be used.

19 (7) When determining whether the department has made reasonable efforts to prevent the
20 necessity of removal of a child from the child's home or to reunify families that have been separated by the
21 state, the court shall review the services provided by the agency including, if applicable, protective services
22 provided pursuant to 41-3-302."

23

24 **Section 33.** Section 41-3-425, MCA, is amended to read:

25 **"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the
26 right to counsel in all proceedings held pursuant to the petition.

27 (2) Except as provided in subsections (3) through (5), the court shall immediately appoint the office
28 of state public defender to assign counsel for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act or [sections 1 through ~~20~~ 19 16].

(3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

(5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through ~~20~~ 19 16], a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:

(a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

(b) the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel."

Section 34. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services -- order -- service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and must be supported by an affidavit signed by a representative of the department stating

1 in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the
2 case is subject to the federal Indian Child Welfare Act or [sections 1 through 20 19 16], clear and convincing
3 evidence that a child is abused or neglected or is in danger of being abused or neglected. The affidavit of the
4 department representative must contain information, if any, regarding statements made by the parents about
5 the facts of the case.

6 (c) If from the alleged facts presented in the affidavit it appears to the court that there is probable
7 cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 20 19 16], clear
8 and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused
9 and neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2)
10 until the adjudication hearing or the temporary investigative hearing. If it appears from the alleged facts
11 contained in the affidavit that there is insufficient probable cause or, if the case is subject to the federal Indian
12 Child Welfare Act or [sections 1 through 20 19 16], clear and convincing evidence to believe that the child has
13 been abused or neglected or is in danger of being abused or neglected, the court shall dismiss the petition.

14 (d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney
15 for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the
16 person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of
17 the petition and affidavit.

18 (e) The petition for immediate protection and emergency protective services must include a notice
19 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
20 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
21 person present during any in-person meeting with a child protection specialist concerning emergency protective
22 services. Reasonable accommodation must be made in scheduling an in-person meeting with the child
23 protection specialist.

24 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the
25 federal Indian Child Welfare Act or [sections 1 through 20 19 16], clear and convincing evidence based on the
26 petition and affidavit, the court may issue an order for immediate protection of the child. The court shall
27 consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to
28 the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or

[sections 1 through ~~20~~ 19 ~~16~~], clear and convincing evidence, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

- (a) the right of entry by a peace officer or department worker;
 - (b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;
 - (c) the right of the department to locate, contact, and share information with any extended family members who may be considered as placement options for the child;
 - (d) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;
 - (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;
 - (f) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;
 - (g) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and
 - (h) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.
- (3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.
- (4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422 or, if the case involves an Indian child, as provided in [section 8 7]."

Section 35. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing -- order. (1) (a) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16], a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 20 19 16], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act or [sections 1 through 20 19 16], if applicable.

(3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1 through 20 19 16], if applicable, and the right to challenge the allegations contained in the petition. The parent,

guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act or [section 8 7], if applicable, have been met.

(5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16], if applicable, the court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 36. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication -- temporary disposition -- findings -- order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16], if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person;

(ii) the continuity of care the person has offered the child by providing permanency or stability in residence, schooling, and activities outside of the home; and

(iii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the

child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents.

(8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 20 19 16], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child."

Section 37. Section 41-3-444, MCA, is amended to read:

"41-3-444. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1)

The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-438, 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (9);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(f) it is in the best interests of the child to remain or be placed with the potential guardian;

(g) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4 3], the Indian child's tribe has received notification from the state of the initiation of the proceedings.

(3) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint in the same manner provided for in 41-3-438(4).

(4) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except for the department's provision of a financial subsidy, if any, pursuant to subsection (9).

(5) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

(6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

(7) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(8) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-438.

(9) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

(10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

Section 38. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16], if applicable, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely

1 result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit,
2 unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall
3 consider but is not limited to the following:

4 (a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to
5 render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a
6 reasonable time;

7 (b) a history of violent behavior by the parent;

8 (c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
9 ability to care and provide for the child; and

10 (d) present judicially ordered long-term confinement of the parent.

11 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
12 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the
13 child.

14 (4) A treatment plan is not required under this part upon a finding by the court following hearing if:

15 (a) the parent meets the criteria of subsections (1)(a) through (1)(e);

16 (b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume
17 the role of parent within a reasonable time;

18 (c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the
19 parent is not in the best interests of the child because of the child's circumstances, including placement options,
20 age, and developmental, cognitive, and psychological needs; or

21 (d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect
22 by the parent has occurred.

23 (5) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian
24 Child Welfare Act or [sections 1 through 20 19 16], a qualified expert witness is required to testify that the
25 continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or
26 physical damage to the Indian child."

27
28 **Section 39.** Section 42-2-102, MCA, is amended to read:

1 **"42-2-102. Proceedings subject to Indian Child Welfare Act ~~Acts~~.** A proceeding under this title that
2 pertains to an Indian child, as defined in ~~the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., [section~~
3 4 3], is subject to that act the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., and [sections 1
4 through 20 19 16]."

6 **Section 40.** Section 42-2-604, MCA, is amended to read:

7 **"42-2-604. Contents of petition for termination of parental rights.** (1) The petition for termination
8 of parental rights must state:

- 9 (a) the identity of the petitioner;
- 10 (b) the date and location of the birth of the child;
- 11 (c) the date of the relinquishment by the birth mother or relinquishing parent;
- 12 (d) the current location of the child;
- 13 (e) the names and locations, if known, of any putative or presumed father of the child;
- 14 (f) whether a parent is one from whom consent is not required;
- 15 (g) whether court orders from any other proceeding have been issued terminating parental rights
- 16 to the child that is the subject of the petition;
- 17 (h) any other evidence supporting termination of the legal rights that a person has with regard to
- 18 the child; and
- 19 (i) a request for temporary custody of the child prior to the adoption.

20 (2) The petitioner shall file with the petition for termination of parental rights the following
21 documents received in support of the petition:

- 22 (a) any relinquishments and consents to adoption;
- 23 (b) any denials of paternity;
- 24 (c) any acknowledgments of paternity and denial of parental rights;
- 25 (d) any affidavits from the putative father registry that have been executed by the department;
- 26 (e) the adoptive decision support services report required under 42-2-409;
- 27 (f) proof of prior service of any notice or acknowledgment of service or waiver of service received;
- 28 and

(g) proof of compliance with the federal Indian Child Welfare Act of 1978, [sections 1 through 20 19 16], and Interstate Compact on the Placement of Children, if applicable."

Section 41. Section 42-4-102, MCA, is amended to read:

"42-4-102. Duties of placing parent. (1) A parent who is directly placing a child for adoption shall execute a voluntary relinquishment and consent to adopt, including:

(a) receiving the adoptive decision support services required by 42-2-409; and
(b) if the parent is a minor, being advised by legal counsel other than the attorney representing the prospective adoptive parent.

(2) A placing parent shall identify and provide information on the location of any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including:

(a) any current spouse;
(b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child; and
(c) any adoptive parent.

(3) A placing parent shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 20 19 16].

(4) A parent placing a child for adoption in a direct parental placement adoption shall provide:
(a) the disclosures of medical and social history required pursuant to 42-3-101;
(b) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth; and

(c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

(5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice of parental placement.

(6) A parent placing a child for adoption in a direct parental placement adoption shall file a disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent or any person acting on behalf of the prospective adoptive parent.

(7) Subject to the limitations set in 42-7-102, expenses for adoptive decision support services, postadoptive counseling, outpatient mental health services, legal fees, and the reasonable costs of preparing reports documenting the required disclosures of medical and social history and the disclosures documenting disbursements are allowable expenses that can be paid for by the prospective adoptive parent."

Section 42. Section 42-4-103, MCA, is amended to read:

"42-4-103. Direct parental placement -- information to be filed. (1) A parent who proposes to place a child for adoption with a prospective adoptive parent who resides in Montana and who is not the child's stepparent or an extended family member shall file with the court of the county in which the prospective adoptive parent or the parent making the placement resides the following:

(a) a notice of parental placement containing the following information:

(i) the name and address of the placing parent;

(ii) the name and address of each prospective adoptive parent;

(iii) the name and address or expected date and place of birth of the child;

(iv) the identity and information on the location of any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including any current spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child, and any adoptive parent;

(v) all relevant information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or sections 1 through 20 19 16; and

(vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

(b) a relinquishment and consent to adoption of the child by the adoptive parent;

(c) the adoptive decision support services report required by 42-2-409;

(d) the medical and social history disclosures required by 42-3-101;

(e) a report of disbursements identifying all payments made to or to the benefit of the placing parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement by

1 each person furnishing information in the report attesting to the truthfulness of the information furnished by that
2 person;

3 (f) a certified copy of the child's birth certificate or other document certifying the place and date of
4 the child's birth;

5 (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and

6 (h) the preplacement evaluation.

7 (2) The notice of parental placement must be signed by the parent making the placement."
8

9 **Section 43.** Section 42-4-203, MCA, is amended to read:

10 **"42-4-203. Duties of placing parent.** (1) A parent who is placing a child for adoption shall comply
11 with the provisions for executing a voluntary relinquishment and consent to adopt.

12 (2) A parent placing a child for adoption shall identify and provide information on the location of:

13 (a) any other legal parent or guardian of the child and any other person required to receive notice
14 under 42-2-605, including any current spouse; and

15 (b) any spouse who is the other birth parent and to whom the parent was married at the probable
16 time of conception or birth of the child.

17 (3) A parent placing a child for adoption shall identify and provide information pertaining to any
18 Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare
19 Act, 25 U.S.C. 1901, et seq., or [sections 1 through 20 19 16].

20 (4) A parent placing a child for adoption shall provide:

21 (a) the disclosures of medical and social history;

22 (b) a certified copy of the child's birth certificate or other document certifying the place and date of
23 the child's birth; and

24 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child."
25

26 **Section 44.** Section 42-4-209, MCA, is amended to read:

27 **"42-4-209. Postplacement department or agency evaluation.** (1) The department or agency shall
28 complete a written postplacement evaluation. The postplacement evaluation must be conducted according to

1 the department's or agency's standards for placement of a child and at a minimum must include a personal
2 interview with the prospective adoptive parent in that person's home and observation of the relationship
3 between the child and the prospective adoptive parent.

4 (2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department or
5 agency shall file the postplacement evaluation.

6 (3) The evaluation must include the following information:

7 (a) whether the child is legally free for adoption;

8 (b) whether the proposed home is suitable for the child;

9 (c) a statement that the medical and social histories of the birth parents and child have been
10 provided to the prospective adoptive parent;

11 (d) an assessment of adaptation by the prospective adoptive parent to parenting the child;

12 (e) a statement that the 6-month postplacement evaluation period has been complied with or
13 should be waived;

14 (f) any other circumstances and conditions that may have a bearing on the adoption and of which
15 the court should have knowledge;

16 (g) whether the agency waives notice of the proceeding;

17 (h) a statement that any applicable provision of law governing an interstate or intercountry
18 placement of the child has been complied with; and

19 (i) a statement of compliance with any applicable provisions of the federal Indian Child Welfare
20 Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20 19 16].

21 (4) The evaluation must contain a definite recommendation stating the reasons for or against the
22 proposed adoption."
23

24 **Section 45.** Section 42-5-101, MCA, is amended to read:

25 **"42-5-101. Petition for adoption.** (1) A petition for adoption must be verified and must specify:

26 (a) the full names, ages, and place and duration of residence of the petitioners;

27 (b) the current marital status of petitioners and, if married, the place and date of the marriage;

28 (c) the circumstances under which the petitioners obtained physical custody of the child and the

- 1 name of the individual or agency that placed the child;
- 2 (d) the date and place of birth of the child, if known;
- 3 (e) the name used for the child in the proceeding and, if a change in name is desired, the full name
- 4 by which the child is to be known;
- 5 (f) that it is the desire of the petitioners that the relationship of parent and child be established
- 6 between the petitioners and the child and to have all the rights and be subject to all the duties of that
- 7 relationship;
- 8 (g) a full description and statement of value of all property owned or possessed by the child;
- 9 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the
- 10 adoption;
- 11 (i) that any applicable law governing interstate or intercountry placement was complied with;
- 12 (j) that, if applicable, the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., ~~was and~~
- 13 [sections 1 through 20 19 16] were complied with;
- 14 (k) whether a previous petition has been filed by the petitioners to adopt the child at issue or any
- 15 other child in any court and the disposition of the petitions; and
- 16 (l) the name and address, if known, of any person who is entitled to receive notice of the petition
- 17 for adoption.
- 18 (2) There must be attached to or accompanying the petition:
- 19 (a) any written consent required by 42-2-301;
- 20 (b) a certified copy of any court order terminating the rights of the child's parents;
- 21 (c) a certified copy of any existing court order in any pending proceeding concerning custody of or
- 22 visitation with the child;
- 23 (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child
- 24 with a special need;
- 25 (e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;
- 26 (f) a disclosure of any disbursements made in connection with the adoption proceeding.
- 27 (3) One copy of the petition must be retained by the court. A copy must be sent to:
- 28 (a) the department or to the agency participating in the adoption proceeding;

(b) the parent placing the child for adoption in a direct parental placement adoption; or
(c) the child's guardian ad litem if the child has one.
(4) Proceedings initiated under this part are subject to the Montana Rules of Civil Procedure except as modified by this part."

Section 46. Section 42-5-107, MCA, is amended to read:

"42-5-107. Best interests of child. (1) In determining whether to grant a petition to adopt, the court shall consider all relevant factors in determining the best interests of the child. The court shall consider factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability.

(2) In a contested adoption proceeding involving a child, the court shall consider the factors set out in subsection (1) and shall also consider:

(a) the nature and length of any relationship already established between a child and any person seeking to adopt the child;

(b) the nature of any family relationship between the child and any person seeking to adopt the child and whether that person has established a positive emotional relationship with the child;

(c) the harm that could result to the child from a change in placement;

(d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

(e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or the department or agency whose consent to the adoption is required.

(3) In an Indian child placement, the court shall determine if the requirements of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20 19 16] have been met."

Section 47. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the director.

(2) The director shall approve a strategic plan for service delivery and divide the state into not

more than 11 public defender regions. The director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act and [section 11-10-8], as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 48. Section 52-2-117, MCA, is amended to read:

"52-2-117. Indian child welfare specialist. (1) The director of the department shall appoint a

qualified person to act as an Indian child welfare specialist.

(2) The duties of the specialist include:

(a) developing Indian foster homes and other Indian placement resources;

(b) providing technical advice to tribal, state, and county agencies and district courts on matters pertaining to Indian child welfare;

(c) providing assistance in negotiating cooperative agreements to provide foster care services to Indian children;

(d) conducting training seminars on implementing the federal Indian Child Welfare Act of 1978, {25 U.S.C. 1901, et seq.,} and [sections 1 through ~~20~~ 19 16];

(e) applying for and accepting grants and other funds for Indian child welfare activities;

(f) developing and maintaining a list of attorneys to represent indigent parents and Indian custodians in Indian child welfare proceedings;

(g) making recommendations to the department on legislation and rules concerning Indian child welfare matters; and

(h) performing other duties concerning Indian child welfare matters as determined by the director."

NEW SECTION. Section 49. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. Section 50. Codification instruction. [Sections 1 through ~~20~~ 19 16] are intended to be codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 1 through ~~20~~ 19 16].

COORDINATION SECTION. SECTION 51. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 111 AND [THIS ACT] ARE PASSED AND APPROVED AND IF BOTH CONTAIN A SECTION THAT AMENDS 47-1-104, THEN THE SECTIONS AMENDING 47-1-104 ARE VOID AND 47-1-104 MUST BE AMENDED AS FOLLOWS:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender

1 services in all courts in this state. The system is supervised by the director.

2 (2) The director shall approve a strategic plan for service delivery and divide the state into not
3 more than 11 public defender regions. The director may establish a regional office to provide public defender
4 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in
5 the region, or utilize other service delivery methods as appropriate and consistent with the purposes described
6 in 47-1-102.

7 (3) When a court orders the assignment of a public defender, the appropriate office shall
8 immediately assign a public defender qualified to provide the required services. The director shall establish
9 protocols to ensure that the offices make appropriate assignments in a timely manner.

10 (4) A court may order assignment of a public defender under this chapter in the following cases:

11 (a) in cases in which a person is entitled to assistance of counsel at public expense because of
12 financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as
13 follows:

14 (i) for a person charged with a felony or charged with a misdemeanor for which there is a
15 possibility of incarceration, as provided in 46-8-101;

16 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as
17 provided in 40-6-119;

18 ~~(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any~~
19 ~~removal, placement, or termination proceeding pursuant to 41-3-422 and as required under the federal Indian~~
20 ~~Child Welfare Act, as provided in 41-3-425 ;~~

21 ~~(iv)(iii)~~ for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

22 ~~(v)(iv)~~ for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

23 ~~(vi)(v)~~ for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

24 ~~(vii)(vi)~~ for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
25 disabled person to a residential facility, as provided in 53-20-112; and

26 ~~(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in~~
27 ~~53-21-116;~~

28 ~~(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as~~

~~provided in 53-24-302; and~~

~~(vii)~~ for a witness in a criminal grand jury proceeding, as provided in 46-4-304; ;

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; ~~and~~

(ix) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant to 41-3-422 and as required under the federal Indian Child Welfare Act and [section 8], as provided in 41-3-425;

(x) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116; and

(xi) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a

1 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
2 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

3 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public
4 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad
5 litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service
6 for the statewide public defender system and does not result in a conflict of interest."

7
8 NEW SECTION. SECTION 52. CONTINGENT VOIDNESS. (1) IF THE INDIAN CHILD WELFARE ACT OF 1978,
9 PUBLIC LAW 95-608, IS DETERMINED BY THE UNITED STATES SUPREME COURT TO BE UNCONSTITUTIONAL OR
10 UNENFORCEABLE IN ITS ENTIRETY IN HAALAND V. BRACKEEN, NO. 21-376, THEN [THIS ACT] IS VOID.

11 (2) ON DETERMINATION BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES THAT THE
12 CONTINGENCY DESCRIBED IN SUBSECTION (1) HAS BEEN MET, THE DEPARTMENT SHALL NOTIFY THE CODE
13 COMMISSIONER.

14
15 NEW SECTION. Section 53. Effective dates. (1) Except as provided in subsection (2), [this act] is
16 effective July 1, 2023.

17 (2) [Section ~~33~~ 32 29] and this section are effective on passage and approval.

18
19 NEW SECTION. SECTION 54. TERMINATION. [THIS ACT] TERMINATES JUNE 30, 2025.

20 - END -

HOUSE BILL NO. 317

INTRODUCED BY J. WINDY BOY, M. WEATHERWAX, C. KEOGH, D. HAWK, E. KERR-CARPENTER, A. BUCKLEY, K. SULLIVAN, K. KORTUM, T. FRANCE, E. STAFMAN, M. CAFERRO, M. THANE, F. SMITH, M. FOX, S. MORIGEAU, J. ETCHART, K. ABBOTT, P. TUSS, S. STEWART PEREGOY, B. CARTER, Z. ZEPHYR, M. ROMANO, L. SMITH, D. BAUM, E. MATTHEWS, S. HOWELL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA INDIAN CHILD WELFARE ACT; PROVIDING REQUIREMENTS FOR DETERMINING INDIAN STATUS AND INDIAN TRIBE; ESTABLISHING REQUIREMENTS FOR COURT PROCEEDINGS, EVIDENCE, AND CONSENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 40-6-405, 40-6-407, 40-6-413, 40-6-414, 40-6-1001, 40-7-135, 41-3-102, 41-3-103, 41-3-109, 41-3-128, 41-3-205, 41-3-301, 41-3-306, 41-3-307, 41-3-422, 41-3-423, 41-3-425, 41-3-427, 41-3-432, 41-3-437, 41-3-444, 41-3-609, 42-2-102, 42-2-604, 42-4-102, 42-4-103, 42-4-203, 42-4-209, 42-5-101, 42-5-107, 47-1-104, AND 52-2-117, MCA; ~~PROVIDING FOR CONTINGENT VOIDNESS;~~ AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

WHEREAS, THERE IS, AT THE PRESENT TIME, A COURT CASE BEFORE THE UNITED STATES SUPREME COURT KNOWN AS HAALAND V. BRACKEEN, NO. 21-376, THAT HAS THE POTENTIAL TO OVERTURN OR MODIFY THE INDIAN CHILD WELFARE ACT IN ITS CURRENT FORM, AND THE LEGISLATURE SEEKS TO PROVIDE GUIDANCE FOR INDIAN CHILD PROTECTION CASES IN THE INTERIM AS THIS CASE IS DECIDED. THE LEGISLATURE DOES NOT EXPECT THIS TO BE THE FINAL WORD ON HOW WE DEAL WITH INDIAN CHILD WELFARE ISSUES OR HOW WE SEEK TO PROVIDE FOR ALL OF MONTANA'S CHILDREN WITHIN THE CHILD PROTECTION SYSTEM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through ~~20~~ ~~19~~ ~~16~~ ~~18~~] may be cited as the "Montana Indian Child Welfare Act".

NEW SECTION. Section 2. Legislative findings -- purpose. (1) The legislature recognizes that in

possibly no other area of concurrent tribal and state law is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the child, or the interests of the child's tribe. ~~Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian Child Welfare Act and [sections 1 through 20 19], the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in [sections 1 through 20 19].~~

(2) The legislature further finds that when placement away from the parent or Indian custodian is necessary for the Indian child's safety, the state is committed to a placement that reflects and honors the unique values of the Indian child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.

(3) ~~It is the intent of the legislature that [sections 1 through 20 19] serve as a means of clarifying existing laws and codifying existing policies and practices.~~

(4) ~~The legislature further intends that nothing in [sections 1 through 20 19] interfere with policies and procedures that are derived from agreements entered into between the department and a tribe or tribe s, as authorized by 25 U.S.C. 1919. The legislature finds that [sections 1 through 20 19] specify the minimum requirements that must be applied in a child custody proceeding and do not prevent the department from providing a higher standard of protection to the rights of an Indian child, parent, Indian custodian, or Indian child's tribe.~~

(5) ~~It is also the legislature's intent that any department policy manual covering Indian child welfare and any relevant local agreements between individual federally recognized tribes and the department should serve as persuasive guides in the interpretation and implementation of the federal Indian Child Welfare Act, [sections 1 through 20 19], and other relevant state laws.~~

NEW SECTION. Section 3. — Applicability. ~~[Sections 1 through 20 19] apply in all child custody proceedings. Whenever a child custody proceeding involves an Indian child and a conflict exists between~~

1 ~~[sections 1 through 20 19] and Title 40, chapter 6, Title 41, chapter 3 or 4, or Title 42, the provisions of~~
2 ~~[sections 1 through 20 19] apply.~~

3
4 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through ~~20 19 16 18~~], the following
5 definitions apply:

6 (1) "Active efforts" means affirmative, active, thorough, and timely efforts meeting the requirements
7 of [section ~~14 13 10 12~~] that are intended primarily to maintain or reunite an Indian child with the child's family
8 and that are tailored to the facts and circumstances of the case.

9 (2) "Adoptive placement" means the permanent placement of an Indian child for adoption,
10 including any action resulting in a final decree of adoption.

11 ~~(3) "Best interests of the Indian child" means the use of practices in accordance with the federal~~
12 ~~Indian Child Welfare Act, [sections 1 through 20 19], and other applicable law that are designed to:~~

13 ~~(a) protect the safety, well-being, development, and stability of the Indian child;~~

14 ~~(b) prevent the unnecessary out-of-home placement of the Indian child;~~

15 ~~(c) acknowledge the right of Indian tribes to maintain their existence and integrity in order to~~
16 ~~promote the stability and security of their children and families; and~~

17 ~~(d) recognize the value to the Indian child of establishing, developing, or maintaining a political,~~
18 ~~cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.~~

19 ~~(4)~~(3) (a) "Child custody proceeding" means any state or private proceeding, other than an
20 emergency proceeding, that may culminate in a foster care placement, termination of parental rights,
21 preadoptive placement, or adoptive placement.

22 (b) The term does not include a placement based on:

23 (i) an act that, if committed by an adult, would be considered a crime; or

24 (ii) an award, in a dissolution proceeding, of custody to one of the child's parents.

25 ~~(5)~~(4) "Court of competent jurisdiction" means a court that has jurisdiction over the relevant subject
26 matter under federal, state, or tribal law.

27 ~~(6)~~(5) "Department" means the department of public health and human services provided for in 2-15-
28 2201.

~~(7)(6)~~ "Foster care placement" means an action removing an Indian child from the child's parent or Indian custodian for temporary placement in a foster home or institution or with a relative, guardian, conservator, or suitable other person under which the parent or Indian custodian may not have the child returned on demand but parental rights have not been terminated.

~~(8)(7)~~ "Indian" means a person who is a member of an Indian tribe or who is an Alaska Native and a member of a regional corporation as established in 43 U.S.C. 1606.

~~(9)(8)~~ "Indian child" means an unmarried Indian person who is under 18 years of age and who is:

- (a) a member of an Indian tribe; or
- (b) eligible for membership in an Indian tribe AND IS THE BIOLOGICAL CHILD OF A MEMBER OF AN INDIAN TRIBE.

~~(10)(9)~~ (a) "Indian child's family" or "extended family member" means an individual defined by the law or custom of the Indian child's tribe as a relative of the Indian child.

(b) If the Indian child's tribe does not identify family members by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, cousin, stepparent, or stepgrandparent. A stepparent or stepgrandparent may be considered a family member even following termination of the marriage.

~~(11)(10)~~ "Indian child's tribe" means a tribe or tribes in which an Indian child is a member or is determined eligible for membership as provided in [section 6 5].

~~(12)(11)~~ "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law has legal or temporary physical custody of an Indian child or to whom the parent has transferred temporary care, physical custody, and control of the Indian child.

~~(13)(12)~~ (a) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians.

(b) The term includes an Alaska Native village as defined in 43 U.S.C. 1602.

~~(14)(13)~~ "Member" or "membership" means a determination by an Indian tribe that an individual is a member of or eligible for membership in that Indian tribe.

~~(15)(14)~~ (a) "Parent" means a biological parent of an Indian child or an individual who has lawfully

1 adopted an Indian child, including adoptions made as tribal customary adoptions.

2 (b) The term does not include an unwed father whose paternity has not been acknowledged or
3 established under Title 40, chapter 6, part 1, or the applicable laws of another state.

4 ~~(16)~~(15) "Preadoptive placement" means the temporary placement of an Indian child in a foster home or
5 institution after the termination of parental rights but before or in lieu of adoptive placement.

6 ~~(17)~~ "Qualified expert witness" means a person who meets the provisions of [section 13 12].

7 ~~(18)~~(16) "Termination of parental rights" means any action resulting in the termination of the parent-child
8 relationship.

9 ~~(19)~~(17) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child
10 custody proceedings. The term includes but is not limited to a federal court of Indian offenses, a court
11 established and operated under the code or custom of an Indian tribe, and an administrative body of an Indian
12 tribe vested with authority over child custody proceedings.

13 ~~(20)~~ (a) " Tribal customary adoption" means adoption or another process through the tribal custom,
14 traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and
15 through which the nonparent is vested with the rights, privileges, and obligations of a legal parent.

16 ~~(b)~~ Termination of the parent-child relationship between the Indian child and the biological parent
17 is not required to recognize a tribal customary adoption.

18
19 **NEW SECTION. Section 4. Determination of Indian status -- confidentiality of records.** (1) (a) A

20 party seeking the foster care placement of, termination of parental rights over, or adoption of a child shall use
21 due diligence to determine whether the child is an Indian child. The inquiry must be made in consultation with:

22 (i) the child's parent or parents;
23 (ii) an individual who has custody of the child or with whom the child resides;
24 (iii) any other individual who reasonably may be expected to have information regarding the child's
25 possible membership or eligibility for membership in an Indian tribe; and

26 (iv) any Indian tribe of which the child may be a member or may be eligible for membership. The
27 consultation with a tribe must be made by contacting the tribe in writing.

28 (b) The inquiries required under this subsection (1) must be documented in the record.

(2) Preliminary contacts for the purpose of using due diligence to determine a child's possible Indian status do not constitute legal notice as required by [section 8 7].

(3) A court shall ask each participant in an emergency proceeding or voluntary or involuntary child custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry must be made at the commencement of the proceeding and all responses must be on the record. The court shall instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(4) If there is reason to know the child is an Indian child but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall:

~~(a) —confirm, by way of a report, declaration, or testimony included in the record, that the department or other party used due diligence to identify and work with all tribes of which there is reason to know the child may be a member or eligible for membership to verify whether the child is a member or eligible for membership; and~~

~~(b) —treat the child as an, unless and until it is determined on the record that the child does not meet the definition of an Indian child.~~

(5) A court, on conducting the inquiry required in subsection (3), has reason to know that a child involved in an emergency proceeding or child custody proceeding may be an Indian child if:

(a) any participant in the proceeding, officer of the court involved in the proceeding, Indian tribe, Indian organization, or agency informs the court that:

(i) the child is an Indian child; or

(ii) it has discovered information indicating that the child is an Indian child;

(b) the child who is the subject of the proceeding gives the court reason to know the child is an Indian child;

(c) the court is informed that the residence or domicile of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(d) the court is informed that the child is or has been a ward of a tribal court;

(e) the court is informed that either of the parents or the child possesses an identification card indicating membership in an Indian tribe; or

(f) the court determines from additional information provided that the child may be an Indian child.

(6) (a) When seeking verification of a child's Indian status during a voluntary proceeding, the court shall keep relevant documents pertaining to the inquiry confidential and under seal if a consenting parent expresses either orally or in writing a desire for anonymity. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with [sections 1 through ~~20~~ 19 ~~16~~ 18], including the obligation to verify whether the child is an Indian child.

(b) A tribe receiving information related to an inquiry of a child's status as an Indian child must keep documents and information confidential.

(7) ~~(a)~~ A written determination by an Indian tribe regarding the child's status as an Indian child is conclusive that the child is an Indian child.

~~(b) If a tribe provides no response to the department's written request for verification of the child's membership status, the nonresponse does not constitute evidence that the child is not a member of or eligible for membership in the tribe.~~

~~(8) If a child has been determined not to be an Indian child, any party to the proceeding or an Indian tribe that subsequently determines the child is a member or is eligible for membership may move, during the pendency of a child custody proceeding to which the federal Indian Child Welfare Act or [sections 1 through 20 19] applies, for redetermination of the child's Indian status based on:~~

~~(a) new evidence;~~

~~(b) a redetermination by the child's tribe;~~

~~(c) newly conferred federal recognition of the tribe; or~~

~~(d) a prior mistaken determination on the part of the tribe.~~

NEW SECTION. Section 5. Determination of Indian tribe. (1) If the Indian child is a member of or eligible for membership in only one tribe, that tribe must be designated as the Indian child's tribe.

(2) If the Indian child meets the definition of Indian child through more than one tribe, deference must be given to the tribe in which the Indian child is already a member, unless otherwise agreed to by the tribes.

(3) (a) If the Indian child meets the definition of Indian child through more than one tribe because

the child is a member in more than one tribe or the child is not a member of but is eligible for membership in more than one tribe, the court shall provide the opportunity in any involuntary child custody proceeding for the tribes to determine which tribe should be designated as the Indian child's tribe.

(b) If the tribes are able to reach an agreement, the court shall designate the agreed-on tribe as the Indian child's tribe.

(c) If the tribes are unable to reach an agreement, for the purposes of [sections 1 through ~~20 19 16~~ 18] the court shall designate as the child's tribe the tribe with which the child has the more significant contacts as the Indian child's tribe. In making the designation, the court shall consider:

- (i) the preference of the parents for membership of the child;
- (ii) the length of the child's past residence or domicile on or near the reservation of each tribe;
- (iii) the tribal membership of the child's custodial parent or Indian custodian;
- (iv) the interest asserted by each tribe in the child custody proceeding;
- (v) whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and
- (vi) self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify with a tribe.

(4) A determination of the Indian child's tribe for the purposes of [sections 1 through ~~20 19 16~~ 18] does not constitute a determination for any other purpose.

NEW SECTION. Section 6. Jurisdiction -- transfer of jurisdiction. (1) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe unless:

(a) the tribe has consented to the state's concurrent jurisdiction PURSUANT TO PUBLIC LAW 280 OR 25 U.S.C. 1919;

(b) the tribe has expressly declined to exercise its exclusive jurisdiction; or

(c) the state is exercising emergency jurisdiction in compliance with [section ~~16 15 12~~ 14].

(2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding, the Indian tribe may retain exclusive jurisdiction regardless of the residence or domicile of the child.

(3) Except as provided in ~~subsections (4) and (6)~~ SUBSECTION (5), in a child custody proceeding involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe on the motion of any of the following:

- (a) either of the Indian child's parents;
- (b) the Indian child's Indian custodian; OR
- (c) the Indian child's tribe; ~~or~~
- ~~(d) the Indian child if the child is 12 years of age or older.~~

~~(4) A tribe to which jurisdiction is being transferred shall respond within 75 days to a motion or order transferring jurisdiction to the tribal court. A failure of the tribe to respond within 75 days must be construed as a declination to accept the transfer of the case.~~

~~(5)~~(4) If the Indian child's tribe has not formally intervened, the moving party shall serve a copy of the motion and all supporting documents on the tribal court to which the moving party seeks transfer.

~~(6)~~(5) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court may not transfer the proceeding.

~~(7) (a) If a state court believes or any party asserts that good cause to deny transfer exists, the reasons for that belief or assertion must be provided orally or in writing on the record and to the parties to the child custody proceeding. Any party to the child custody proceeding must have the opportunity to provide the court with the reasons that good cause exists to deny transfer of the proceeding.~~

~~(b) In determining whether good cause exists, the court may not consider:~~

- ~~(i) whether the child custody proceeding is at an advanced stage;~~
- ~~(ii) whether there have been prior proceedings involving the child for which no petition to transfer was filed;~~
- ~~(iii) whether transfer could affect the placement of the child;~~
- ~~(iv) the child's cultural connections with the tribe or its reservation; or~~
- ~~(v) socioeconomic conditions or any negative perception of the tribal or bureau of Indian affairs social services or judicial systems.~~

~~(c) If the court denies transfer of jurisdiction, the court shall state its reasons for the denial orally on~~

~~the record or in a written order.~~

(6) (A) IF A STATE COURT BELIEVES OR ANY PARTY ASSERTS THAT GOOD CAUSE TO DENY TRANSFER EXISTS, THE REASONS FOR THAT BELIEF OR ASSERTION MUST BE PROVIDED ORALLY OR IN WRITING ON THE RECORD AND TO THE PARTIES TO THE CHILD CUSTODY PROCEEDING. ANY PARTY TO THE CHILD CUSTODY PROCEEDING MUST HAVE THE OPPORTUNITY TO PROVIDE THE COURT WITH THE REASONS THAT GOOD CAUSE EXISTS TO DENY TRANSFER OF THE PROCEEDING.

(B) IN DETERMINING WHETHER GOOD CAUSE EXISTS, THE COURT MAY NOT CONSIDER:

(I) WHETHER THE CHILD CUSTODY PROCEEDING IS AT AN ADVANCED STAGE;

(II) WHETHER THERE HAVE BEEN PRIOR PROCEEDINGS INVOLVING THE CHILD FOR WHICH NO PETITION TO TRANSFER WAS FILED;

(III) WHETHER TRANSFER COULD AFFECT THE PLACEMENT OF THE CHILD;

(IV) THE CHILD'S CULTURAL CONNECTIONS WITH THE TRIBE OR ITS RESERVATION; OR

(V) SOCIOECONOMIC CONDITIONS OR ANY NEGATIVE PERCEPTION OF THE TRIBAL OR BUREAU OF INDIAN AFFAIRS SOCIAL SERVICES OR JUDICIAL SYSTEMS.

(C) IF THE COURT DENIES TRANSFER OF JURISDICTION, THE COURT SHALL STATE ITS REASONS FOR THE DENIAL ORALLY ON THE RECORD OR IN A WRITTEN ORDER.

~~(6)(7)~~ (7) (a) Following entry of an order transferring jurisdiction to the Indian child's tribe and pending receipt of a tribal court order accepting jurisdiction, the state court:

(i) may conduct additional hearings and enter orders that are in the best interests of the child and strictly comply with the requirements of the federal Indian Child Welfare Act and [sections 1 through ~~20 19 16~~ 18]; and

(ii) may not enter a final order in a child custody proceeding, except an order dismissing the proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the child was removed.

(b) On receipt of an order from a tribal court accepting jurisdiction, the court shall:

(i) dismiss the child custody proceeding with prejudice; and

(ii) expeditiously provide the tribal court with all records related to the proceeding, including but not limited to the pleadings and any court record. The state court shall work with the tribal court to ensure the

1 transfer of the custody of the Indian child and the proceeding is accomplished smoothly and in a way that
2 minimizes the disruption of services to the family.

3 ~~(9)(7)~~ (8) If the Indian child's tribe accepts jurisdiction, the state court shall enter an order
4 relieving the office of the state public defender and any public defender assigned pursuant to 41-3-425 and 47-
5 1-104 from further representation.

6 ~~(10)(8)~~ (9) If the Indian child's tribe declines jurisdiction, the state court shall enter an order
7 vacating the order transferring jurisdiction and proceed with adjudication of the child custody proceeding in
8 compliance with the federal Indian Child Welfare Act, [sections 1 through ~~20 19 16~~ 18], and any applicable
9 state-tribal agreement.

10
11 **NEW SECTION. Section 7. Notice.** (1) The petitioning party shall provide notice of the initial petition
12 filed in an involuntary child custody proceeding and a petition seeking termination of parental rights when the
13 petitioning party knows or has reason to know that the child is or may be an Indian child. Notice must be
14 provided as required in subsection (2) to:

15 (a) the Indian child's parent or Indian custodian; and

16 (b) the child's tribe or tribes.

17 (2) (a) Notice to the tribe must be made by certified mail, return receipt requested, and must meet
18 the requirements of subsection (4). The notice must be sent to the person designated in the most current
19 Federal Register as the designated tribal agent for service of notice for the purposes of the federal Indian Child
20 Welfare Act. The petitioning party shall file the return receipt with the court as proof of notice.

21 (b) Notice to the parent or Indian custodian must be made by personal service, or alternative
22 means as provided in 41-3-422 if personal service cannot be accomplished, and must meet the requirements of
23 subsection (4).

24 (c) If the identity or location of the parent or Indian custodian and the tribe cannot be determined,
25 the notice must be given to the secretary of the U.S. department of the interior by certified mail, return receipt
26 requested, in accordance with the provisions of 25 CFR, part 23.

27 (d) Service of all other petitions, other than the initial petition and a petition for termination of
28 parental rights, must be served on the tribe by first-class mail unless otherwise directed by the tribe's

1 designated agent for notice.

2 (e) When notice of the initial petition and a petition for termination of parental rights to the parent or
3 Indian custodian is required under this subsection (2), personal service, and alternative means of personal
4 service when personal service cannot be accomplished, as provided in 41-3-422, takes the place of certified
5 mail with return receipt requested.

6 (3) A foster care placement or a termination of parental rights proceeding may not be held until at
7 least 10 days after receipt of the notice by the parent or Indian custodian, the tribe, and, if applicable, the
8 secretary. The parent, Indian custodian, or tribe shall, on request, be granted up to 20 additional days to
9 prepare for the proceeding. The 10-day notice requirement does not limit a court's ability to hold an emergency
10 protective services hearing pursuant to 41-3-306.

11 (4) Notice provided under this section must be in clear and understandable language and include
12 the following:

13 (a) the child's name, date of birth, and place of birth;

14 (b) all known names of the child's parents, including maiden, married, and former names or
15 aliases;

16 (c) the parents' dates of birth, places of birth, and tribal enrollment numbers, if known;

17 (d) the names, dates of birth, places of birth, and tribal enrollment information of other direct lineal
18 ancestors of the child, if known;

19 (e) the name of each Indian tribe in which the child is a member or may be eligible for membership
20 if a biological parent is a member; and

21 (f) a copy of the petition, complaint, or other document by which the child custody proceeding was
22 initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing.

23
24 ~~NEW SECTION. Section 9. Tribal participation in proceedings -- intervention. (1) A state court~~
25 ~~shall allow a designated tribal representative to represent a tribe in all proceedings under [sections 1 through 20~~
26 ~~], in person or by electronic means. The court may not require that the tribal representative be an attorney or~~
27 ~~that the person be licensed in Montana if the person is an attorney.~~

28 ~~(2) An attorney may appear in a proceeding involving an Indian child under [sections 1 through 20]~~

without complying with any rule of the Montana supreme court regarding admission to practice in the state or paying the associated fees or assessments related to admission to practice if the attorney is:

(a) permitted to practice in another state, tribe, or territory of the United States or District of Columbia; and

(b) in good standing with the bar association of that state, tribe, or territory.

(3) The Indian child's tribe or tribes may file as an intervenor at any point in a child custody proceeding involving the Indian child.

NEW SECTION. Section 9. — Full faith and credit. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe that are applicable to Indian child custody proceedings.

NEW SECTION. SECTION 8. FULL FAITH AND CREDIT. THE STATE SHALL GIVE FULL FAITH AND CREDIT TO THE PUBLIC ACTS, RECORDS, JUDICIAL PROCEEDINGS, AND JUDGMENTS OF ANY INDIAN TRIBE THAT ARE APPLICABLE TO INDIAN CHILD CUSTODY PROCEEDINGS.

NEW SECTION. Section 9. Right to counsel. In a child custody proceeding under [sections 1 through 20 ~~19~~ ~~16~~ 18] in which the court determines that the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian has the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child pursuant to 41-3-425.

NEW SECTION. Section 10. Right of access to evidence. Each party to a child custody proceeding involving an Indian child has the right to examine all reports or other documents filed with the court on which any decision with respect to the proceeding may be based.

NEW SECTION. Section 12. — Qualified expert witness — requirements — prohibitions. (1) A qualified expert witness is an individual who provides testimony in a child custody proceeding under [sections 1 through 20 ~~19~~]. The purpose of the testimony is to assist a court in determining whether the continued custody

of the child by or the return of the child to the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The parties may not waive the requirement for qualified expert witness testimony.

(2) The petitioning party shall consult with the Indian child's tribe on the selection of the qualified expert witness, including asking whether the tribe has a list of preferred qualified expert witnesses. To the extent possible, the petitioning party shall use an individual preferred by the tribe.

(3) A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and must be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe.

(4) (a) If the petitioner is the department, the child protection specialist assigned to the case and the child protection specialist's supervisor may not testify as qualified expert witnesses in the case.

(b) Nothing in this subsection (4) may be construed as barring:

(i) the child protection specialist or the child protection specialist's supervisor from testifying as an expert witness for other purposes in a proceeding under [sections 1 through 20 19]; or

(ii) the petitioner or another party in a proceeding under [sections 1 through 20 19] from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court, including the determination of whether the continued custody of the Indian child by or return of the Indian child to the parent, parents, or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

NEW SECTION. SECTION 11. QUALIFIED EXPERT WITNESS -- REQUIREMENTS -- PROHIBITIONS. (1) A

QUALIFIED EXPERT WITNESS IS AN INDIVIDUAL WHO PROVIDES TESTIMONY IN A CHILD CUSTODY PROCEEDING UNDER [SECTIONS 1 THROUGH 18]. THE PURPOSE OF THE TESTIMONY IS TO ASSIST A COURT IN DETERMINING WHETHER THE CONTINUED CUSTODY OF THE CHILD BY OR THE RETURN OF THE CHILD TO THE PARENT OR INDIAN CUSTODIAN IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE CHILD. THE PARTIES MAY NOT WAIVE THE REQUIREMENT FOR THE QUALIFIED EXPERT WITNESS TESTIMONY.

(2) THE PETITIONING PARTY SHALL CONSULT WITH THE INDIAN CHILD'S TRIBE ON THE SELECTION OF THE QUALIFIED EXPERT WITNESS, INCLUDING ASKING WHETHER THE TRIBE HAS A LIST OF PREFERRED QUALIFIED EXPERT WITNESSES. TO THE EXTENT POSSIBLE, THE PETITIONING PARTY SHALL USE AN INDIVIDUAL PREFERRED BY THE TRIBE.

(3) A QUALIFIED EXPERT WITNESS MUST BE QUALIFIED TO TESTIFY REGARDING WHETHER THE CHILD'S CONTINUED CUSTODY BY THE PARENT OR INDIAN CUSTODIAN IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE CHILD AND MUST BE QUALIFIED TO TESTIFY AS TO THE PREVAILING SOCIAL AND CULTURAL STANDARDS OF THE INDIAN CHILD'S TRIBE.

(4) (A) IF THE PETITIONER IS THE DEPARTMENT, THE CHILD PROTECTION SPECIALIST ASSIGNED TO THE CASE AND THE CHILD PROTECTION SPECIALIST'S SUPERVISOR MAY NOT TESTIFY AS QUALIFIED EXPERT WITNESSES IN THE CASE.

(B) NOTHING IN THIS SUBSECTION (4) MAY BE CONSTRUED AS BARRING:

(I) THE CHILD PROTECTION SPECIALIST OR THE CHILD PROTECTION SPECIALIST'S SUPERVISOR FROM TESTIFYING AS AN EXPERT WITNESS FOR OTHER PURPOSES IN A PROCEEDING UNDER [SECTIONS 1 THROUGH 18]; OR

(II) THE PETITIONER OR ANOTHER PARTY IN A PROCEEDING UNDER [SECTIONS 1 THROUGH 18] FROM PROVIDING ADDITIONAL WITNESSES OR EXPERT TESTIMONY, SUBJECT TO THE APPROVAL OF THE COURT, ON ANY ISSUE BEFORE THE COURT, INCLUDING THE DETERMINATION OF WHETHER THE CONTINUED CUSTODY OF THE INDIAN CHILD BY OR RETURN OF THE INDIAN CHILD TO THE PARENT, PARENTS, OR INDIAN CUSTODIAN IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE INDIAN CHILD.

NEW SECTION. Section 12. Active efforts. (1) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that the efforts have proven unsuccessful.

(2) The court shall make written findings that the petitioning party has provided active efforts and the efforts must be documented in detail in the record.

(3) If the department is involved in the child custody proceeding, active efforts must include assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.

(4) (a) To the maximum extent possible, active efforts must be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians,

1 and tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include but are
2 not limited to:

- 3 (i) conducting a comprehensive assessment of the circumstances of the Indian child's family, with
4 a focus on safe reunification as the most desirable goal;
- 5 (ii) identifying appropriate services and helping the parents to overcome barriers, including actively
6 assisting the parents in obtaining the services;
- 7 (iii) identifying, notifying, and inviting representatives of the Indian child's tribe to participate in
8 providing support and services to the Indian child's family and in family team meetings, permanency planning,
9 and resolution of placement issues;
- 10 (iv) conducting or causing to be conducted a diligent search for the Indian child's extended family
11 members and contacting and consulting with extended family members to provide family structure and support
12 for the Indian child and the Indian child's parents;
- 13 (v) offering and employing all available and culturally appropriate family preservation strategies
14 and facilitating the use of remedial and rehabilitative services provided by the child's tribe;
- 15 (vi) taking steps to keep siblings together whenever possible;
- 16 (vii) supporting regular visits with parents or Indian custodians in the most natural setting possible
17 as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure
18 the health, safety, and welfare of the child;
- 19 (viii) identifying community resources, including housing, financial, transportation, mental health,
20 substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the
21 child's family, in accessing and using the resources;
- 22 (ix) monitoring progress and participation in services;
- 23 (x) considering alternative ways to address the needs of the Indian child's parents and, when
24 appropriate, the family, if the optimum services do not exist or are not available; and
- 25 (xi) providing postreunification services and monitoring.

26 (b) Referral to a service or program does not constitute an active effort if the referral was the sole
27 action taken.
28

NEW SECTION. Section 13. Evidentiary requirements. (1) A court may not order a foster care

placement of an Indian child unless:

(a) the petitioning party has provided clear and convincing evidence that active efforts were made to provide remedial services and rehabilitative programs to prevent the breakup of an Indian family and that the efforts were unsuccessful; and

(b) clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, to demonstrate that continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(2) The court may not terminate parental rights of the parents of an Indian child unless evidence beyond a reasonable doubt is presented that:

(a) active efforts were made to prevent the breakup of the Indian family and the efforts were unsuccessful; and

(b) continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The evidence must include testimony of one or more qualified expert witnesses.

~~(3) For the purposes of this section, any harm that may result from interfering with the bond or attachment that may have formed between the child and a foster care provider may not be the sole basis or primary reason for continuing a foster care placement or terminating the parental rights of a parent of an Indian child.~~

~~(4)~~(3) (a) Evidence required under this section must show a causal relationship between the specific conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the child who is the subject of the child custody proceeding.

(b) Evidence showing only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

NEW SECTION. Section 14. Emergency removal of Indian child. (1) Nothing in [sections 1 through

20 ~~19~~ ~~16~~ ~~18~~] may be construed to prevent the department from removing an Indian child from the Indian child's parent or Indian custodian or prevent the emergency placement of the Indian child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the Indian child.

(2) An emergency removal or placement of an Indian child under state law must terminate immediately when the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(3) A state court shall:

(a) make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

(b) promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended;

(c) at any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child; and

(d) immediately terminate or direct the department to terminate the emergency removal if the court or department possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(4) An emergency proceeding may be terminated by any of the following actions:

(a) initiation of a child custody proceeding subject to the provisions of the federal Indian Child Welfare Act and [sections 1 through 20 ~~19~~ ~~16~~ ~~18~~];

(b) transfer of the child to the jurisdiction of the appropriate Indian tribe; or

(c) restoring the child to the parent or Indian custodian.

(5) A petition for a court order authorizing the emergency removal or placement, or its accompanying documents, must contain a statement of the risk of imminent physical damage or harm to the Indian child, any evidence that the emergency removal or placement continues to be necessary to prevent the damage or harm, and if available:

(a) the full name, age, and last known address of the Indian child;

(b) the name and address of the child's parents and Indian custodians, if any;

(c) the steps taken to provide notice to the child's parents, Indian custodians, and tribe about the

1 emergency proceeding;

2 (d) if the child's and Indian custodians are unknown, a detailed explanation of the efforts made to
3 locate and contact the individuals, including contact with the appropriate bureau of Indian affairs regional
4 director;

5 (e) the residence or the domicile of the Indian child;

6 (f) if either the residence or the domicile of the Indian child is believed to be on a reservation or in
7 an Alaska Native village, the name of the tribe affiliated with that reservation or village;

8 (g) the tribal affiliation of the child and of the parents or Indian custodians;

9 (h) a specific and detailed account of the circumstances that led the agency responsible for the
10 emergency removal of the child to remove the child;

11 (i) if the child is believed to reside or be domiciled on a reservation where the tribe exercises
12 exclusive jurisdiction over child custody matters, a statement of the efforts made and being made to contact the
13 tribe and transfer the child to the tribe's jurisdiction; and

14 (j) a statement of the efforts made to assist the parents or Indian custodians so the Indian child
15 may be safely returned to the parents or Indian custodians.

16 (6) Contact made to provide notice of an emergency removal and reported pursuant to subsection
17 (5)(c) does not constitute the notice required under [section 8 7] for the purposes of subsequent dependency,
18 termination of parental rights, or adoption proceedings.

19 (7) An emergency proceeding regarding an Indian child may not be continued for more than 30
20 days unless the court determines that:

21 (a) restoring the child to the parent or Indian custodian would subject the child to imminent
22 physical damage or harm;

23 (b) the court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian
24 tribe; and

25 (c) it has not been possible to initiate a child custody proceeding.

26

27 **NEW SECTION. Section 15. Consent.** (1) At an involuntary foster care placement hearing, a
28 stipulation or consent by the parent or Indian custodian is not valid unless the court certifies on the record that

1 the terms and consequences of the stipulation or consent were fully explained in detail and were fully
2 understood by the parent or Indian custodian. The court shall certify on the record that the parent or Indian
3 custodian fully understood the explanation in English or that the explanation was translated into a language that
4 the parent or Indian custodian understood.

5 (2) In a voluntary proceeding for foster care placement or termination of parental rights, consent by
6 a parent or Indian custodian is not valid unless the consent is:

7 (a) executed in writing and recorded before a judge of a court of competent jurisdiction; and

8 (b) accompanied by the judge's written certificate that:

9 (i) the terms and consequences of the consent were fully explained in detail and were fully
10 understood by the parent or Indian custodian; and

11 (ii) the parent or Indian custodian fully understood the explanation in English or that the
12 explanation was translated into a language that the parent or Indian custodian understood.

13 (3) Voluntary consent for release of custody given prior to or within 10 days after the birth of an
14 Indian child may not be considered valid.

15 (4) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care
16 placement at any time. On withdrawal of consent, the Indian child must be returned to the parent or Indian
17 custodian.

18 (5) In a voluntary proceeding for termination of parental rights to or adoptive placement of an
19 Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an
20 order terminating parental rights or a final decree of adoption, and the Indian child must be returned to the
21 parent.

22 (6) (a) After the entry of a final decree of adoption of an Indian child, the parent may withdraw
23 consent to the adoption on the grounds that consent was obtained through fraud or duress. On a finding that
24 consent was obtained through fraud or duress, the court shall vacate the decree and return the Indian child to
25 the parent.

26 (b) An adoption that has been effective for at least 2 years may not be invalidated under this
27 section unless otherwise allowed by law.

28

NEW SECTION. Section 16. Improper removal of Indian child. If a petitioner in a child custody proceeding under [sections 1 through ~~20~~ 19 ~~16~~ 18] has improperly removed an Indian child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the Indian child to the parent or Indian custodian unless returning the Indian child to the parent or Indian custodian would subject the Indian child to substantial and immediate danger or threat of substantial or immediate danger.

NEW SECTION. Section 17. Removal of Indian child from adoptive or foster care placement. (1) If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the Indian child, the biological parent or prior Indian custodian may petition to have the Indian child returned to the custody of the parent or Indian custodian. The court shall grant the request unless there is a showing by clear and convincing evidence that return of custody to the biological parent or Indian custodian is not in the best interests of the child.

(2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home for the purposes of further foster care or a preadoptive or adoptive placement, the placement must be made in accordance with [sections 1 through ~~20~~ 19 ~~16~~ 18] unless an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

NEW SECTION. Section 18. Placement preferences. (1) When an emergency removal, foster care placement, or preadoptive placement of an Indian child is necessary, the petitioning party shall, in the absence of good cause to the contrary, place the Indian child in the least restrictive setting that:

- (a) most closely approximates a family situation;
- (b) is in reasonable proximity to the Indian child's home; and
- (c) allows for the Indian child's special needs, if any, to be met.

(2) In a foster care or preadoptive placement, preference must be given, in the absence of good cause to the contrary, to the Indian child's placement with one of the following, in descending order of priority:

- (a) an Indian child's extended family member;
- (b) a foster home licensed, approved, or specified by the Indian child's tribe;

(c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
(d) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

(3) In the absence of good cause to the contrary, in an adoptive or other permanent placement of an Indian child, preference must be given to a placement with one of the following, in descending order of priority:

(a) extended family members;

(b) an Indian family of the same tribe as the Indian child;

~~(c) an Indian family that is of a similar culture to the Indian child's tribe; or~~

~~(d)~~(c) another Indian family.

(4) Notwithstanding the placement preferences listed in subsections (2) and (3), if a different order of placement preference is established by the Indian child's tribe, the court or agency implementing the placement shall follow the order of preference established by the tribe if the placement is in the least restrictive setting appropriate to the particular needs of the Indian child and within reasonable proximity to the child's home.

(5) When appropriate, the preference of the Indian child or the child's parent must be considered by the court.

(6) The standards to be applied in meeting the preference requirements of this section must be the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside or with which the parent or extended family members maintain social and cultural ties.

(7) Nothing in this section prevents the department or the court from placing an Indian child with a parent to effectuate a permanency plan regardless of the parent's relationship to the Indian child's tribe.

(8) (a) If any party asserts that good cause to not follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child custody proceeding and the court.

(b) The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:

(i) the request of one or both of the Indian child's parents on attestation that they have reviewed the placement options, if any, that comply with the order of preference provided for in subsections (2) and (3);

(ii) the request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

(iii) the presence of a sibling attachment that can be maintained only through a particular placement;

(iv) the extraordinary physical, mental, or emotional needs of the Indian child, including but not limited to specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; or

(v) the unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but no suitable placement was found. For the purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) A placement may not depart from the preferences based:-

~~(i) —on the socioeconomic status of any placement relative to another placement; or~~

~~(ii) —solely on ordinary bonding or attachment.~~

Section 19. Section 40-6-405, MCA, is amended to read:

"40-6-405. Surrender of newborn to emergency services provider -- temporary protective custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

- (2) The emergency services provider shall make a reasonable effort to do all of the following:
- (a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;
- (b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;
- (c) if possible, ascertain whether the newborn has a tribal affiliation and, if so, ascertain relevant information pertaining to any Indian heritage of the newborn;
- (d) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:
- (i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;
- (ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;
- (iii) the parent may not receive personal notice of the court proceedings begun by the department;
- (iv) information that the parent provides to an emergency services provider will not be made public;
- (v) a parent may contact the department for more information and counseling; and
- (vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20 19 16 18].
- (3) After providing a parent with the information described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:
- (a) encourage the parent to provide any relevant family or medical information, including information regarding any tribal affiliation;
- (b) provide the parent with information that the parent may receive counseling or medical attention;
- (c) inform the parent that information that the parent provides will not be made public;
- (d) ask the parent for the parent's name;
- (e) inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the

1 parent to identify the other parent;

2 (f) inform the parent that the department can provide confidential services to the parent; and

3 (g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a
4 hearing to terminate parental rights."

5

6 **Section 20.** Section 40-6-407, MCA, is amended to read:

7 **"40-6-407. Assumption of care, custody, and control by department -- placement of child --**

8 **presumptions -- Montana birth certificate.** (1) Upon receipt of notice under 40-6-406, the department shall:

9 (a) immediately assume the care, control, and temporary protective custody of the newborn;

10 (b) if a parent is known and willing, immediately meet with the parent;

11 (c) make a temporary placement of the newborn;

12 (d) immediately request assistance from law enforcement officials to investigate and determine,
13 through the national center for missing and exploited children and any other national and state missing children
14 information programs, whether the newborn is a missing child;

15 (e) not later than 48 hours after assuming the care, control, and temporary protective custody of
16 the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, and, if applicable,
17 [sections 1 through 20 19 16 18], requesting appropriate relief with the goal of achieving permanent placement
18 for the newborn at the earliest possible date; and

19 (f) within 30 days, make reasonable efforts to identify and locate a parent who did not surrender
20 the newborn. If the identity and address of that parent are unknown, the department shall provide notice by
21 publication in a newspaper of general circulation in the county where the newborn was surrendered.

22 (2) The department, after assuming the care, custody, and control of a newborn under subsection
23 (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not required
24 to search for relatives of the newborn as a placement or permanency option or to implement other placement
25 requirements that give preference to relatives if the department does not have information as to the identity of
26 the newborn or either of the newborn's parents. The department shall place the newborn with prospective
27 adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding
28 the newborn's medical history, date of birth, or age if the department has that information.

(3) A newborn surrendered under 40-6-405 is presumed to have been born in Montana unless the biological parent otherwise informs the department or the emergency services provider to whom the newborn is surrendered.

(4) A Montana birth certificate may be issued based on the presumption of birth in Montana as provided in subsection (3). A birth certificate issued to a newborn surrendered under 40-6-405 must provide a date of birth based on either the actual date of birth, if known, or on the date of birth determined by the physician who performs the medical examination of the newborn under 40-6-406."

Section 21. Section 40-6-413, MCA, is amended to read:

"40-6-413. Custody action -- order. Based on the court's finding of the newborn's best interest under 40-6-412, the court may issue an order:

(1) granting legal or physical custody, or both, of the newborn to the parent and either retaining or relinquishing jurisdiction; or

(2) denying custody of the newborn to the parent and referring the matter to the department or county attorney for proceedings under Title 41, chapter 3, and, if applicable, [sections 1 through 20 19 16 18]."

Section 22. Section 40-6-414, MCA, is amended to read:

"40-6-414. Presumption of waiver of parental rights -- department to file petition. (1) A-Except as provided in [section 17 16 13 15], a parent who surrenders a newborn under 40-6-405 and who does not file a custody action under 40-6-411 is presumed to have knowingly waived the parent's parental rights to the newborn.

(2) If a custody action is not filed under 40-6-411 or if the parent is denied custody of the newborn under 40-6-413, the department shall file a petition under Title 41, chapter 3, part 4, or, if applicable, [sections 1 through 20 19 16 18], requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date."

Section 23. Section 40-6-1001, MCA, is amended to read:

"40-6-1001. Petition for termination -- criteria -- process. (1) A district court may order a

1 termination of the parent-child legal relationship after the filing of a petition pursuant to this section alleging the
2 factual grounds for termination as provided for in subsection (2).

3 (2) Grounds for termination pursuant to this section exist when the parent of a child:

4 (a) is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a
5 delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse
6 occurred and, as a result of the sexual intercourse, the child is born; or

7 (b) at a fact-finding hearing is found by clear and convincing evidence, except as provided in the
8 federal Indian Child Welfare Act and [sections 1 through 20 19 16 18], if applicable, to have committed an act of
9 sexual intercourse without consent, sexual assault, or incest that caused the child to be conceived.

10 (3) The court's order must state the reasons for the decision.

11 (4) The victim of the crime or act may file a petition pursuant to this section. If the victim is a minor,
12 the victim's parent or guardian may file a petition on the victim's behalf.

13 (5) The respondent to the petition has the right to counsel in all proceedings held pursuant to the
14 petition.

15 (6) Before termination of the parent-child legal relationship may be ordered, the court shall
16 determine whether the provisions of 40-6-1002 and 40-6-1003 have been followed.

17 (7) There is no right to a jury trial at proceedings held to consider the termination of a parent-child
18 legal relationship.

19 (8) (a) An order for the termination of the parent-child legal relationship divests the child and the
20 parent of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in
21 Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except:

22 (i) the right of the child to inherit from the parent; and

23 (ii) that nothing in this section may be construed to relieve the parent whose rights are terminated
24 as provided in this part of any child support obligations as provided in Title 40, chapters 4 and 5.

25 (b) An order or decree entered pursuant to this part may not disentitle a child to any benefit due to
26 the child from a third person, including but not limited to an Indian tribe, an agency, a state, or the United
27 States."

Section 24. Section 40-7-135, MCA, is amended to read:

"40-7-135. Application to Indian tribes. (1) A child custody proceeding that pertains to an Indian child as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4 3] is not subject to this chapter to the extent that it is governed by the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18].

(2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, 40-7-134 through 40-7-140, and part 2 of this chapter.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this chapter."

Section 25. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which

1 the child resides;

2 (b) a person providing care in a day-care facility;

3 (c) an employee of a public or private residential institution, facility, home, or agency; or

4 (d) any other person responsible for the child's welfare in a residential setting.

5 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or
6 neglect.

7 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care
8 recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the
9 withholding of medically indicated treatment or medically indicated psychological care permitted or authorized
10 under state law.

11 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the
12 sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care
13 for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the
14 state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm
15 to the child.

16 (5) "Best interests of the child" means the physical, mental, and psychological conditions and
17 needs of the child and any other factor considered by the court to be relevant to the child.

18 (6) "Child" or "youth" means any person under 18 years of age.

19 (7) (a) "Child abuse or neglect" means:

20 (i) actual physical or psychological harm to a child;

21 (ii) substantial risk of physical or psychological harm to a child; or

22 (iii) abandonment.

23 (b) (i) The term includes:

24 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological
25 harm to a child by the acts or omissions of a person responsible for the child's welfare;

26 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the
27 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an
28 unlawful clandestine laboratory, as prohibited by 45-9-132; or

(C) any form of child sex trafficking or human trafficking.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act ~~is or~~ [sections 1 through 20 19 16 18] are applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Child protection specialist" means an employee of the department who investigates allegations of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

(9) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(10) "Department" means the department of public health and human services provided for in 2-15-2201.

(11) "Family engagement meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(12) "Indian child" ~~means any unmarried person who is under 18 years of age and who is either:~~

~~(a) a member of an Indian tribe; or~~

~~(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe~~
has the meaning provided in [section 4 3].

(13) "Indian child's tribe" ~~means:~~

~~(a) the Indian tribe in which an Indian child is a member or eligible for membership; or~~

~~(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts~~ has the meaning provided in [section 4 3].

(14) "Indian custodian" ~~means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent~~ has the meaning provided in [section 4 3].

(15) "Indian tribe" ~~means any Indian tribe, band, nation, or other organized group or community of~~
~~Indians recognized by:~~

~~(a) the state of Montana; or~~

~~(b) the United States secretary of the interior as being eligible for the services provided to Indians or~~
~~because of the group's status as Indians, including any Alaskan native village as defined in federal law~~ has the
meaning provided in [section 4 3].

(16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-
1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person
who is 18 years of age or older.

(17) "Parent" means a biological or adoptive parent or stepparent.

(18) "Parent-child legal relationship" means the legal relationship that exists between a child and the
child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(19) "Permanent placement" means reunification of the child with the child's parent, adoption,
placement with a legal guardian, placement with a fit and willing relative, or placement in another planned
permanent living arrangement until the child reaches 18 years of age.

(20) "Physical abuse" means an intentional act, an intentional omission, or gross negligence
resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns,
bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or
function, or death.

(21) "Physical neglect" means either failure to provide basic necessities, including but not limited to
appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing
the child to be exposed to an unreasonable physical or psychological risk to the child.

(22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the
parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological
abuse or neglect;

- 1 (ii) commits or allows sexual abuse or exploitation of the child;
- 2 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child
3 was abused or neglected by a parent or other person responsible for the child's welfare;
- 4 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate
5 food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or
6 offered financial or other reasonable means to do so;
- 7 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or
8 welfare by failing to intervene or eliminate the risk; or
- 9 (vi) abandons the child.
- 10 (b) The term does not include a youth not receiving supervision solely because of parental inability
11 to control the youth's behavior.
- 12 (23) (a) "Protective services" means services provided by the department:
- 13 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;
- 14 (ii) to enable a child alleged to have been abused or neglected who has been removed from the
15 home to safely return to the home; or
- 16 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances
17 and the best interests of the child prevent reunification with parents or a return to the home.
- 18 (b) The term includes emergency protective services provided pursuant to 41-3-301, written
19 prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to
20 parts 4 and 6 of this chapter.
- 21 (24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions
22 that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the
23 commission of acts of violence against another person residing in the child's home.
- 24 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime
25 against the victim.
- 26 (25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to
27 the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18] means:;
- 28 ~~(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable~~

1 in tribal customs as they pertain to family organization and child-rearing practices;

2 (b) ~~a lay expert witness who has substantial experience in the delivery of child and family services to~~
3 ~~Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within~~
4 ~~the Indian child's tribe; or~~

5 (c) ~~a professional person who has substantial education and experience in providing services to~~
6 ~~children and families and who possesses significant knowledge of and experience with Indian culture, family~~
7 ~~structure, and child-rearing practices in general~~ a person who meets the provisions of [section 13 12]

8 (A) A MEMBER OF THE INDIAN CHILD'S TRIBE WHO IS RECOGNIZED BY THE TRIBAL COMMUNITY AS
9 KNOWLEDGEABLE IN TRIBAL CUSTOMS AS THEY PERTAIN TO A FAMILY ORGANIZATION AND CHILD-REARING PRACTICES;

10 (B) A LAY EXPERT WITNESS WHO HAS SUBSTANTIAL EXPERIENCE IN THE DELIVERY OF CHILD AND FAMILY
11 SERVICES TO INDIANS AND EXTENSIVE KNOWLEDGE OF PREVAILING SOCIAL AND CULTURAL STANDARDS AND CHILD-
12 REARING PRACTICES WITHIN THE INDIAN CHILD'S TRIBE; OR

13 (C) A PROFESSIONAL PERSON WHO HAS SUBSTANTIAL EDUCATION AND EXPERIENCE IN PROVIDING
14 SERVICES TO CHILDREN AND FAMILIES AND WHO POSSESSES SIGNIFICANT KNOWLEDGE OF AND EXPERIENCE WITH INDIAN
15 CULTURE, FAMILY STRUCTURE, AND CHILD-REARING PRACTICES IN GENERAL.

16 (26) "Qualified individual" means a trained professional or licensed clinician who:

17 (a) has expertise in the therapeutic needs assessment used for placement of youth in a
18 therapeutic group home;

19 (b) is not an employee of the department; and

20 (c) is not connected to or affiliated with any placement setting in which children are placed.

21 (27) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe
22 that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known
23 to the person.

24 (28) "Residential setting" means an out-of-home placement where the child typically resides for
25 longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

26 (29) "Safety and risk assessment" means an evaluation by a child protection specialist following an
27 initial report of child abuse or neglect to assess the following:

28 (a) the existing threat or threats to the child's safety;

1 (b) the protective capabilities of the parent or guardian;

2 (c) any particular vulnerabilities of the child;

3 (d) any interventions required to protect the child; and

4 (e) the likelihood of future physical or psychological harm to the child.

5 (30) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
6 consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a
7 minor, or incest, as described in Title 45, chapter 5.

8 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area
9 while attending to the sanitary or health care needs of that infant or toddler by a parent or other person
10 responsible for the child's welfare.

11 (31) "Sexual exploitation" means:

12 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
13 45-5-601 through 45-5-603;

14 (b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

15 (c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

16 (32) "Therapeutic needs assessment" means an assessment performed by a qualified individual
17 within 30 days of placement of a child in a therapeutic group home that:

18 (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,
19 validated, functional assessment tool;

20 (b) determines whether the needs of the child can be met with family members or through
21 placement in a youth foster home or, if not, which appropriate setting would provide the most effective and
22 appropriate level of care for the child in the least restrictive environment and be consistent with the short-term
23 and long-term goals for the child as specified in the child's permanency plan; and

24 (c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

25 (33) "Treatment plan" means a written agreement between the department and the parent or
26 guardian or a court order that includes action that must be taken to resolve the condition or conduct of the
27 parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve
28 court services, the department, and other parties, if necessary, for protective services.

(34) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (34), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(35) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 26. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction and venue. (1) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], in all matters arising under this chapter, a person is subject to a proceeding under this chapter and the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of

- 1 the court has voluntarily or involuntarily left the state or the jurisdiction of the court;
- 2 (c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for
- 3 any purpose;
- 4 (d) a youth or youth's parent or guardian who resides in Montana;
- 5 (e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing
- 6 of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in
- 7 Montana.
- 8 (2) Venue is proper in the county where a youth is located or has resided within 180 days before
- 9 the filing of a petition under this part or a county where the youth's parent or guardian resides or has resided
- 10 within 180 days before the filing of a petition under this part."

11

12 **Section 27.** Section 41-3-109, MCA, is amended to read:

13 **"41-3-109. Proceedings subject to Indian Child Welfare Act Acts.** If a proceeding under this

14 chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or

15 [section 4 3], the proceeding is subject to the federal Indian Child Welfare Act and [sections 1 through 20 19 16

16 18]."

17

18 **Section 28.** Section 41-3-128, MCA, is amended to read:

19 **"41-3-128. Certificate requirements -- supervision -- fees.** (1) An applicant for certification as a

20 child protection specialist shall:

21 (a) successfully complete a course in child protection, as defined by the department by rule, which

22 must include training in:

23 (i) ethics;

24 (ii) governing statutory and regulatory framework;

25 (iii) role of law enforcement;

26 (iv) crisis intervention techniques;

27 (v) childhood trauma research;

28 (vi) evidence-based practices for family preservation and strengthening; and

(vii) the provisions of the federal Indian Child Welfare Act, 25 U.S.C. 1902, et seq., and [sections 1 through 20 19 16 18]; and

(b) demonstrate the applicant's ability to perform all essential functions of the certified child protection role by earning a passing score on a competency examination developed pursuant to 41-3-130.

(2) As a prerequisite to the issuance of a certificate, the department shall require the applicant to submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(3) An applicant who has a history of criminal convictions has the opportunity to demonstrate to the department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny the certificate if it determines that the applicant is not sufficiently rehabilitated."

Section 29. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family engagement meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to

operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the department.

(p) the news media, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18];

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) an attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a child protection specialist, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county or regional interdisciplinary child information and school safety team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) (a) The records described in subsection (3) must be disclosed to a member of the United States congress or a member of the Montana legislature if all of the following requirements are met:

(i) the member receives a written inquiry regarding a child and whether the laws of the United States or the state of Montana that protect children from abuse or neglect are being complied with or whether the laws need to be changed to enhance protections for children;

(ii) the member submits a written request to the department requesting to review the records relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the child whose records are to be reviewed, and any other information that will assist the department in locating the records.

(iii) before reviewing the records, the member:

(A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and

(B) receives from the department an orientation of the content and structure of the records.

(b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for the member to view but may not be copied, recorded, photographed, or otherwise replicated by the member, and must remain solely in the department's possession. The member must be allowed to view the records in the local office where the case is or was active.

(c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date the written request to review records was received by the department.

(5) (a) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

(i) the attorney general;

(ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect occurred;

(iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred; or

(iv) the office of the child and family ombudsman.

(b) The records described in subsection (3) must be promptly disclosed by the department to an

appropriate individual described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

- (i) the death of the child as a result of child abuse or neglect;
- (ii) a sexual offense, as defined in 46-23-502, against the child;
- (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502;

or

(iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

(c) (i) The department shall promptly disclose the results of an investigation to an individual described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the determination that:

(A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or

(B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession of a Schedule I or Schedule II drug that is prohibited by state law.

(ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have contact with drug paraphernalia as defined in 45-10-101.

(d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be released within 5 business days to the county attorney of the county in which the acts that are the subject of a report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a) and to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211.

(ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault shall report to the department as provided in this part without disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.

(iii) When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

(6) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(7) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(8) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(9) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a) and (5). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(10) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (9) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(11) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost."

Section 30. Section 41-3-301, MCA, is amended to read:

" 41-3-301. (Temporary) Emergency protective service. (1) Any child protection specialist of the

department, a peace officer, or the county attorney who has reason to believe any child is in immediate or
apparent danger of harm may immediately remove the child and place the child in a protective facility. After
ensuring that the child is safe, the department may make a request for further assistance from the law
enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the
parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
time the placement is made or as soon after placement as possible. Notification under this subsection must:

(a) include the reason for removal;

(b) include information regarding the option for an emergency protective services hearing within 5
days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

(c) provide contact information for the child protection specialist, the child protection specialist's
supervisor, and the office of state public defender; and

(d) advise the parents, parent, guardian, or other person having physical or legal custody of the
child that the parents, parent, guardian, or other person:

(i) has the right to receive a copy of the affidavit as provided in subsection (6);

(ii) has the right to attend and participate in an emergency protective services hearing, if one is
requested, and the show cause hearing, including providing statements to the judge;

(iii) may have a support person present during any in-person meeting with the child protection
specialist concerning emergency protective services; and

(iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.

(2) If a child protection specialist, a peace officer, or the county attorney determines in an
investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
occurrence of partner or family member assault or strangulation of a partner or family member against an adult
member of the household, the department shall take appropriate steps for the protection of the child, which may
include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the child protection specialist shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

41-3-301. (Effective July 1, 2023) Emergency protective service. (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must:

(a) include the reason for removal;

(b) include information regarding the emergency protective services and show cause hearings and the purpose of the hearings; and

(c) advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services.

(2) If a child protection specialist, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or

1 family member;

2 (b) making reasonable efforts to remove the person who allegedly committed the partner or family
3 member assault or strangulation of a partner or family member from the child's residence if it is determined that
4 the child or another family or household member is in danger of partner or family member assault or
5 strangulation of a partner or family member; and

6 (c) providing services to help protect the child from being placed with or having unsupervised
7 visitation with the person alleged to have committed partner or family member assault or strangulation of a
8 partner or family member until the department determines that the alleged offender has met conditions
9 considered necessary to protect the safety of the child.

10 (3) If the department determines that an adult member of the household is the victim of partner or
11 family member assault or strangulation of a partner or family member, the department shall provide the adult
12 victim with a referral to a domestic violence program.

13 (4) A child who has been removed from the child's home or any other place for the child's
14 protection or care may not be placed in a jail.

15 (5) The department may locate and contact extended family members upon placement of a child in
16 out-of-home care. The department may share information with extended family members for placement and
17 case planning purposes.

18 (6) If a child is removed from the child's home by the department, a child protection specialist shall
19 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
20 copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An
21 abuse and neglect petition must be filed in accordance with 41-3-422 within 5 working days, excluding
22 weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for
23 the care of the child have been made by the parents or a written prevention plan has been entered into
24 pursuant to 41-3-302.

25 (7) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18],
26 if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise
27 stipulated by the parties pursuant to 41-3-434.

28 (8) If the department determines that a petition for immediate protection and emergency protective

services must be filed to protect the safety of the child, the child protection specialist shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 31. Section 41-3-306, MCA, is amended to read:

"41-3-306. (Temporary) Emergency protective services hearing on request -- exceptions. (1) (a)

If requested by the parents, parent, guardian, or other person having physical or legal custody of a child removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5 business days.

(b) The department shall provide notification of the option for the hearing as required under 41-3-301.

(c) A hearing is not required if the child is released prior to the time of the requested hearing.

(2) The hearing may be held in person, by videoconference, or, if no other means are available, by telephone.

(3) The child and the child's parents, parent, guardian, or other person having physical or legal custody of the child must be represented by counsel at the hearing.

(4) If the court determines that continued out-of-home placement is needed, the court shall:

(a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and

(b) review the availability of options for a kinship placement and make recommendations if appropriate.

(5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian, or other person having physical or legal custody of the child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.

(6) If the court determines continued removal is not appropriate, the child must be immediately returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

(7) This section does not apply:

(a) in judicial districts that are holding voluntary prehearing conferences pursuant to 41-3-307; or

(b) to cases involving an Indian child who is subject to the federal Indian Child Welfare Act.

(8) The emergency protective services hearing is an emergency proceeding for the purposes of [sections 1 through 20 19 16 18] and is not subject to the notice requirements of [sections 1 through 20 19 16 18]. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

41-3-306. (Effective July 1, 2023) Emergency protective services hearing -- exception. (1) (a) A district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to 41-3-301 to determine whether there is probable cause to continue the removal beyond 5 business days.

(b) The department shall provide notification of the hearing as required under 41-3-301.

(c) A hearing is not required if the child is released prior to the time of the required hearing.

(2) The hearing may be held in person, by videoconference, or, if no other means are available, by telephone.

(3) The child and the child's parents, parent, guardian, or other person having physical or legal custody of the child must be represented by counsel at the hearing.

(4) If the court determines that continued out-of-home placement is needed, the court shall:

(a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and

(b) review the availability of options for a kinship placement and make recommendations if appropriate.

(5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.

(6) If the court determines continued removal is not appropriate, the child must be immediately returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

(7) This section does not apply to cases involving an Indian child who is subject to the federal
Indian Child Welfare Act.

(8) The emergency protective services hearing is an emergency proceeding for the purposes of
[sections 1 through 20 19 16 18] and is not subject to the notice requirements of [sections 1 through 20 19 16
18]."

Section 32. Section 41-3-307, MCA, is amended to read:

"41-3-307. (Temporary) Voluntary prehearing conferences -- pilot project counties. (1) The
parents, parent, guardian, or other person having physical or legal custody of a child who has been removed
from the home pursuant to 41-3-301 may participate in a conference within 5 days of the child's removal and
before a show cause hearing held by the court if the court is participating in a pilot project testing the
effectiveness of prehearing conferences.

(2) A prehearing conference may be held under this section only if it involves:

- (a) the parents, parent, guardian, or other person having physical or legal custody of the child;
- (b) the person's legal counsel;
- (c) the county attorney's office; and
- (d) a department social worker.

(3) To the greatest degree possible using available funding, the meetings must be conducted by
an independent and trained facilitator.

(4) At a minimum, the meetings must involve discussion of:

- (a) the child's current placement and options for continued placement if the child remains out of the
home;
- (b) whether other options exist for an in-home safety plan or resource that may allow the child to
remain in the home;
- (c) parenting time schedules; and
- (d) treatment services for the family.

(5) This section does not apply to cases involving an Indian child who is subject to the federal
Indian Child Welfare Act or [sections 1 through 20 19 16 18].

(6) This section applies to a district court participating in the prehearing conference pilot project funded by the court improvement program on May 14, 2021, and to any district court in a rural county or multicounty district that chooses to hold conferences in accordance with this section on or after that date. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)"

Section 33. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;
(ii) temporary investigative authority, as provided in 41-3-433;
(iii) temporary legal custody, as provided in 41-3-442;
(iv) long-term custody, as provided in 41-3-445;
(v) termination of the parent-child legal relationship, as provided in 41-3-607;
(vi) appointment of a guardian pursuant to 41-3-444;
(vii) a determination that preservation or reunification services need not be provided; or
(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4 3], the standards of proof required for legal relief under the federal Indian Child Welfare Act and [sections 1 through 20 19 16 18] apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act and [sections 1 through 20 19 16 18], if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an

1 attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the
2 interests of justice require. If personal service cannot be made upon a putative father, the court may not provide
3 for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the
4 opinion of the court, the interests of justice require counsel to be appointed or assigned.

5 (8) If a parent of the child is a minor, notice must be given to the minor parent's parents or
6 guardian, and if there is no guardian, the court shall appoint one.

7 (9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster
8 parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the
9 petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard
10 does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the
11 child must be given notice of all reviews by the reviewing body.

12 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the
13 child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this
14 section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is
15 presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the
16 best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in
17 the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings
18 held pursuant to this chapter involving the custody of the child.

19 (10) An abuse and neglect petition must state:

20 (a) the nature of the alleged abuse or neglect and of the relief requested;

21 (b) the full name, age, and address of the child and the name and address of the child's parents or
22 the guardian or person having legal custody of the child; and

23 (c) the names, addresses, and relationship to the child of all persons who are necessary parties to
24 the action.

25 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-
26 425.

27 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
28 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute

1 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family
2 engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution
3 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department
4 is a party to the original proceeding, a representative of the department who has complete authority to settle the
5 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

6 (13) Service of a petition under this section must be accompanied by a written notice advising the
7 child's parent, guardian, or other person having physical or legal custody of the child of the:

8 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or
9 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1
10 through 20 19 16 18], if applicable;

11 (b) right to contest the allegations in the petition; and

12 (c) timelines for hearings and determinations required under this chapter.

13 (14) If appropriate, orders issued under this chapter must contain a notice provision advising a
14 child's parent, guardian, or other person having physical or legal custody of the child that:

15 (a) the court is required by federal and state laws to hold a permanency hearing to determine the
16 permanent placement of a child no later than 12 months after a judge determines that the child has been
17 abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

18 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that
19 termination of parental rights is in the best interests of the child and the state is required to file a petition to
20 terminate parental rights; and

21 (c) completion of a treatment plan does not guarantee the return of a child.

22 (15) A court may appoint a standing master to conduct hearings and propose decisions and orders
23 to the court for court consideration and action. A standing master may not conduct a proceeding to terminate
24 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
25 in the area of child abuse and neglect laws."

26
27 **Section 34.** Section 41-3-423, MCA, is amended to read:

28 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**

findings -- permanency plan. (1) (a) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state.

(b) (i) For the purposes of this subsection (1), the term "reasonable efforts" means the department shall in good faith develop and implement voluntary services agreements and treatment plans that are designed to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing voluntary services agreements and treatment plans.

(ii) The term includes but is not limited to:

(A) written prevention plans;

(B) development of individual written case plans specifying state efforts to preserve or reunify families;

(C) placement in the least disruptive setting possible with priority given to family placement as provided in 41-3-439;

(D) provision of services pursuant to a case plan that is designed to address the parent's treatment and other needs precluding the parent from safely parenting, including but not limited to individual and family therapy, parent education, substance abuse treatment, and trauma-related services; and

(E) periodic review of each case to ensure timely progress toward reunification or permanent placement.

(c) In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment,

1 torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

2 (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate
3 homicide of a child;

4 (c) committed aggravated assault against a child;

5 (d) committed neglect of a child that resulted in serious bodily injury or death; or

6 (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and
7 the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately
8 care for the child at issue.

9 (3) Preservation or reunification services are not required for a putative father, as defined in 42-2-
10 201, if the court makes a finding that the putative father has failed to do any of the following:

11 (a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

12 (b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

13 (i) visiting the child at least monthly when physically and financially able to do so; or

14 (ii) having regular contact with the child or with the person or agency having the care and custody
15 of the child when physically and financially able to do so; and

16 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the
17 child was not in the physical custody of the other parent.

18 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person
19 has not been:

20 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or

21 (ii) recorded on the child's birth certificate as the child's father.

22 (4) A judicial finding that preservation or reunification services are not necessary under this section
23 must be supported by clear and convincing evidence.

24 (5) If the court finds that preservation or reunification services are not necessary pursuant to
25 subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable
26 efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must
27 be made to place the child in a timely manner in accordance with the permanency plan and to complete
28 whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying in-state and out-of-state placements, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

Section 35. Section 41-3-425, MCA, is amended to read:

"41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsections (3) through (5), the court shall immediately appoint the office of state public defender to assign counsel for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18].

(3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

(5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:

- (a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and
- (b) the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel."

Section 36. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services -- order -- service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and must be supported by an affidavit signed by a representative of the department stating in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], clear and convincing evidence that a child is abused or neglected or is in danger of being abused or neglected. The affidavit of the department representative must contain information, if any, regarding statements made by the parents about the facts of the case.

(c) If from the alleged facts presented in the affidavit it appears to the court that there is probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the temporary investigative hearing. If it appears from the alleged facts

1 contained in the affidavit that there is insufficient probable cause or, if the case is subject to the federal Indian
2 Child Welfare Act or [sections 1 through 20 19 16 18], clear and convincing evidence to believe that the child
3 has been abused or neglected or is in danger of being abused or neglected, the court shall dismiss the petition.

4 (d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney
5 for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the
6 person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of
7 the petition and affidavit.

8 (e) The petition for immediate protection and emergency protective services must include a notice
9 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
10 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
11 person present during any in-person meeting with a child protection specialist concerning emergency protective
12 services. Reasonable accommodation must be made in scheduling an in-person meeting with the child
13 protection specialist.

14 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the
15 federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], clear and convincing evidence based on
16 the petition and affidavit, the court may issue an order for immediate protection of the child. The court shall
17 consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to
18 the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or
19 [sections 1 through 20 19 16 18], clear and convincing evidence, the court may issue an order granting the
20 following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

21 (a) the right of entry by a peace officer or department worker;

22 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to
23 care provided by a noncustodial parent, kinship or foster family, group home, or institution;

24 (c) the right of the department to locate, contact, and share information with any extended family
25 members who may be considered as placement options for the child;

26 (d) a requirement that the parents, guardian, or other person having physical or legal custody
27 furnish information that the court may designate and obtain evaluations that may be necessary to determine
28 whether a child is a youth in need of care;

(e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(f) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(g) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(h) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422 or, if the case involves an Indian child, as provided in [section 8 7]."

Section 37. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing -- order. (1) (a) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian

Child Welfare Act or [sections 1 through 20 19 16 18], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], if applicable.

(3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act or [section 8 7], if applicable, have been met.

(5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], if applicable, the court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 38. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication -- temporary disposition -- findings -- order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the

time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person;

(ii) the continuity of care the person has offered the child by providing permanency or stability in residence, schooling, and activities outside of the home; and

(iii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek

1 employment or attend school.

2 (5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the
3 examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and
4 the mediation privilege granted by 26-1-813.

5 (6) (a) If the court determines that the child is not an abused or neglected child, the petition must
6 be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

7 (b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional
8 hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required
9 investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The
10 temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

11 (7) (a) Before making an adjudication, the court may make oral findings, and following the
12 adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

13 (i) which allegations of the petition have been proved or admitted, if any;

14 (ii) whether there is a legal basis for continued court and department intervention; and

15 (iii) whether the department has made reasonable efforts to avoid protective placement of the child
16 or to make it possible to safely return the child to the child's home.

17 (b) The court may order:

18 (i) terms for visitation, support, and other intrafamily communication pending disposition if the
19 child is to be placed or to remain in temporary out-of-home care prior to disposition;

20 (ii) examinations, evaluations, or counseling of the child or parents in preparation for the
21 disposition hearing that does not require an expenditure of money by the department unless the court finds
22 after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The
23 department is the payor of last resort after all family, insurance, and other resources have been examined.

24 (iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not
25 already done;

26 (iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the
27 child to remain in the home; and

28 (v) the department to continue efforts to notify noncustodial parents.

(8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 20 ~~19~~ ~~16~~ 18], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child."

Section 39. Section 41-3-444, MCA, is amended to read:

"41-3-444. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1)

The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-438, 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (9);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(f) it is in the best interests of the child to remain or be placed with the potential guardian;

(g) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4 3], the Indian child's tribe

1 has received notification from the state of the initiation of the proceedings.

2 (3) In the case of an abandoned child, the court may give priority to a member of the abandoned
3 child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if
4 placement with the extended family member is in the best interests of the child. If more than one extended
5 family member has requested to be appointed as guardian, the court may determine which extended family
6 member to appoint in the same manner provided for in 41-3-438(4).

7 (4) The entry of a decree of guardianship pursuant to this section terminates the custody of the
8 department and the involvement of the department with the child and the child's parents except for the
9 department's provision of a financial subsidy, if any, pursuant to subsection (9).

10 (5) A guardian appointed under this section may exercise the powers and has the duties provided
11 in 72-5-231.

12 (6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after
13 hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best
14 interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful
15 guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent
16 have not been terminated, and other persons directly interested in the welfare of the child.

17 (7) A guardian may petition the court for permission to resign the guardianship. A petition may
18 include a request for appointment of a successor guardian.

19 (8) After notice and hearing on a petition for removal or permission to resign, the court may appoint
20 a successor guardian or may terminate the guardianship and restore temporary legal custody to the department
21 pursuant to 41-3-438.

22 (9) The department may provide a financial subsidy to a guardian appointed pursuant to this
23 section if the guardianship meets the department's criteria and if the department determines that a subsidy is in
24 the best interests of the child. The amount of the subsidy must be determined by the department.

25 (10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."
26

27 **Section 40.** Section 41-3-609, MCA, is amended to read:

28 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal

relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], if applicable, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent within a reasonable time;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred.

(5) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child."

Section 41. Section 42-2-102, MCA, is amended to read:

"42-2-102. Proceedings subject to Indian Child Welfare Act Acts. A proceeding under this title that pertains to an Indian child, as defined in ~~the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., [section 4 3]~~, is subject to ~~that act~~ the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., and [sections 1 through 20 19 16 18]."

Section 42. Section 42-2-604, MCA, is amended to read:

"42-2-604. Contents of petition for termination of parental rights. (1) The petition for termination of parental rights must state:

(a) the identity of the petitioner;

(b) the date and location of the birth of the child;

- 1 (c) the date of the relinquishment by the birth mother or relinquishing parent;
2 (d) the current location of the child;
3 (e) the names and locations, if known, of any putative or presumed father of the child;
4 (f) whether a parent is one from whom consent is not required;
5 (g) whether court orders from any other proceeding have been issued terminating parental rights
6 to the child that is the subject of the petition;
7 (h) any other evidence supporting termination of the legal rights that a person has with regard to
8 the child; and
9 (i) a request for temporary custody of the child prior to the adoption.
10 (2) The petitioner shall file with the petition for termination of parental rights the following
11 documents received in support of the petition:
12 (a) any relinquishments and consents to adoption;
13 (b) any denials of paternity;
14 (c) any acknowledgments of paternity and denial of parental rights;
15 (d) any affidavits from the putative father registry that have been executed by the department;
16 (e) the adoptive decision support services report required under 42-2-409;
17 (f) proof of prior service of any notice or acknowledgment of service or waiver of service received;
18 and
19 (g) proof of compliance with the federal Indian Child Welfare Act of 1978, sections 1 through 20
20 19 16 18, and Interstate Compact on the Placement of Children, if applicable."
21

22 **Section 43.** Section 42-4-102, MCA, is amended to read:

23 **"42-4-102. Duties of placing parent.** (1) A parent who is directly placing a child for adoption shall
24 execute a voluntary relinquishment and consent to adopt, including:

- 25 (a) receiving the adoptive decision support services required by 42-2-409; and
26 (b) if the parent is a minor, being advised by legal counsel other than the attorney representing the
27 prospective adoptive parent.

- 28 (2) A placing parent shall identify and provide information on the location of any other legal parent

1 or guardian of the child and any other person required to receive notice under 42-2-605, including:

2 (a) any current spouse;

3 (b) any spouse who is the other birth parent and to whom the parent was married at the probable
4 time of conception or birth of the child; and

5 (c) any adoptive parent.

6 (3) A placing parent shall identify and provide information pertaining to any Indian heritage of the
7 child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et
8 seq., or [sections 1 through ~~20 19 16~~ 18].

9 (4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

10 (a) the disclosures of medical and social history required pursuant to 42-3-101;

11 (b) a certified copy of the child's birth certificate or other document certifying the place and date of
12 the child's birth; and

13 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

14 (5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice
15 of parental placement.

16 (6) A parent placing a child for adoption in a direct parental placement adoption shall file a
17 disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent or
18 any person acting on behalf of the prospective adoptive parent.

19 (7) Subject to the limitations set in 42-7-102, expenses for adoptive decision support services,
20 postadoptive counseling, outpatient mental health services, legal fees, and the reasonable costs of preparing
21 reports documenting the required disclosures of medical and social history and the disclosures documenting
22 disbursements are allowable expenses that can be paid for by the prospective adoptive parent."
23

24 **Section 44.** Section 42-4-103, MCA, is amended to read:

25 **"42-4-103. Direct parental placement -- information to be filed.** (1) A parent who proposes to place
26 a child for adoption with a prospective adoptive parent who resides in Montana and who is not the child's
27 stepparent or an extended family member shall file with the court of the county in which the prospective
28 adoptive parent or the parent making the placement resides the following:

- (a) a notice of parental placement containing the following information:
- (i) the name and address of the placing parent;
 - (ii) the name and address of each prospective adoptive parent;
 - (iii) the name and address or expected date and place of birth of the child;
 - (iv) the identity and information on the location of any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including any current spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child, and any adoptive parent;
 - (v) all relevant information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 20 19 16 18]; and
 - (vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);
- (b) a relinquishment and consent to adoption of the child by the adoptive parent;
- (c) the adoptive decision support services report required by 42-2-409;
- (d) the medical and social history disclosures required by 42-3-101;
- (e) a report of disbursements identifying all payments made to or to the benefit of the placing parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement by each person furnishing information in the report attesting to the truthfulness of the information furnished by that person;
- (f) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth;
- (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and
- (h) the preplacement evaluation.
- (2) The notice of parental placement must be signed by the parent making the placement."

Section 45. Section 42-4-203, MCA, is amended to read:

"42-4-203. Duties of placing parent. (1) A parent who is placing a child for adoption shall comply

1 with the provisions for executing a voluntary relinquishment and consent to adopt.

2 (2) A parent placing a child for adoption shall identify and provide information on the location of:

3 (a) any other legal parent or guardian of the child and any other person required to receive notice
4 under 42-2-605, including any current spouse; and

5 (b) any spouse who is the other birth parent and to whom the parent was married at the probable
6 time of conception or birth of the child.

7 (3) A parent placing a child for adoption shall identify and provide information pertaining to any
8 Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare
9 Act, 25 U.S.C. 1901, et seq., or [sections 1 through 20 19 16 18].

10 (4) A parent placing a child for adoption shall provide:

11 (a) the disclosures of medical and social history;

12 (b) a certified copy of the child's birth certificate or other document certifying the place and date of
13 the child's birth; and

14 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child."
15

16 **Section 46.** Section 42-4-209, MCA, is amended to read:

17 **"42-4-209. Postplacement department or agency evaluation.** (1) The department or agency shall
18 complete a written postplacement evaluation. The postplacement evaluation must be conducted according to
19 the department's or agency's standards for placement of a child and at a minimum must include a personal
20 interview with the prospective adoptive parent in that person's home and observation of the relationship
21 between the child and the prospective adoptive parent.

22 (2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department or
23 agency shall file the postplacement evaluation.

24 (3) The evaluation must include the following information:

25 (a) whether the child is legally free for adoption;

26 (b) whether the proposed home is suitable for the child;

27 (c) a statement that the medical and social histories of the birth parents and child have been
28 provided to the prospective adoptive parent;

- 1 (d) an assessment of adaptation by the prospective adoptive parent to parenting the child;
2 (e) a statement that the 6-month postplacement evaluation period has been complied with or
3 should be waived;
4 (f) any other circumstances and conditions that may have a bearing on the adoption and of which
5 the court should have knowledge;
6 (g) whether the agency waives notice of the proceeding;
7 (h) a statement that any applicable provision of law governing an interstate or intercountry
8 placement of the child has been complied with; and
9 (i) a statement of compliance with any applicable provisions of the federal Indian Child Welfare
10 Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20 19 16 18].

11 (4) The evaluation must contain a definite recommendation stating the reasons for or against the
12 proposed adoption."
13

14 **Section 47.** Section 42-5-101, MCA, is amended to read:

15 **"42-5-101. Petition for adoption.** (1) A petition for adoption must be verified and must specify:

- 16 (a) the full names, ages, and place and duration of residence of the petitioners;
17 (b) the current marital status of petitioners and, if married, the place and date of the marriage;
18 (c) the circumstances under which the petitioners obtained physical custody of the child and the
19 name of the individual or agency that placed the child;
20 (d) the date and place of birth of the child, if known;
21 (e) the name used for the child in the proceeding and, if a change in name is desired, the full name
22 by which the child is to be known;
23 (f) that it is the desire of the petitioners that the relationship of parent and child be established
24 between the petitioners and the child and to have all the rights and be subject to all the duties of that
25 relationship;
26 (g) a full description and statement of value of all property owned or possessed by the child;
27 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the
28 adoption;

- 1 (i) that any applicable law governing interstate or intercountry placement was complied with;
- 2 (j) that, if applicable, the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., ~~was and~~
- 3 [sections 1 through 20 19 16 18] were complied with;
- 4 (k) whether a previous petition has been filed by the petitioners to adopt the child at issue or any
- 5 other child in any court and the disposition of the petitions; and
- 6 (l) the name and address, if known, of any person who is entitled to receive notice of the petition
- 7 for adoption.
- 8 (2) There must be attached to or accompanying the petition:
- 9 (a) any written consent required by 42-2-301;
- 10 (b) a certified copy of any court order terminating the rights of the child's parents;
- 11 (c) a certified copy of any existing court order in any pending proceeding concerning custody of or
- 12 visitation with the child;
- 13 (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child
- 14 with a special need;
- 15 (e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;
- 16 (f) a disclosure of any disbursements made in connection with the adoption proceeding.
- 17 (3) One copy of the petition must be retained by the court. A copy must be sent to:
- 18 (a) the department or to the agency participating in the adoption proceeding;
- 19 (b) the parent placing the child for adoption in a direct parental placement adoption; or
- 20 (c) the child's guardian ad litem if the child has one.
- 21 (4) Proceedings initiated under this part are subject to the Montana Rules of Civil Procedure
- 22 except as modified by this part."

23

24 **Section 48.** Section 42-5-107, MCA, is amended to read:

25 **"42-5-107. Best interests of child.** (1) In determining whether to grant a petition to adopt, the court

26 shall consider all relevant factors in determining the best interests of the child. The court shall consider factors

27 relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child,

28 and familial stability.

(2) In a contested adoption proceeding involving a child, the court shall consider the factors set out in subsection (1) and shall also consider:

(a) the nature and length of any relationship already established between a child and any person seeking to adopt the child;

(b) the nature of any family relationship between the child and any person seeking to adopt the child and whether that person has established a positive emotional relationship with the child;

(c) the harm that could result to the child from a change in placement;

(d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

(e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or the department or agency whose consent to the adoption is required.

(3) In an Indian child placement, the court shall determine if the requirements of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20 19 16 18] have been met."

Section 49. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the director.

(2) The director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as

1 follows:

2 (i) for a person charged with a felony or charged with a misdemeanor for which there is a
3 possibility of incarceration, as provided in 46-8-101;

4 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as
5 provided in 40-6-119;

6 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
7 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian
8 Child Welfare Act and [section 11 10 & 9], as provided in 41-3-425;

9 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

10 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

11 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

12 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
13 disabled person to a residential facility, as provided in 53-20-112;

14 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided
15 in 53-21-116;

16 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
17 provided in 53-24-302; and

18 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

19 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense
20 regardless of the person's financial ability to retain private counsel, as follows:

21 (i) as provided for in 41-3-425;

22 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent
23 or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction
24 Prosecution Act, as provided in 41-5-1607;

25 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on
26 Juveniles, as provided in 41-6-101;

27 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental
28 Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 50. Section 52-2-117, MCA, is amended to read:

"52-2-117. Indian child welfare specialist. (1) The director of the department shall appoint a qualified person to act as an Indian child welfare specialist.

(2) The duties of the specialist include:

(a) developing Indian foster homes and other Indian placement resources;

(b) providing technical advice to tribal, state, and county agencies and district courts on matters pertaining to Indian child welfare;

(c) providing assistance in negotiating cooperative agreements to provide foster care services to Indian children;

(d) conducting training seminars on implementing the federal Indian Child Welfare Act of 1978, {25 U.S.C. 1901, et seq.,} and [sections 1 through 20 19 16 18];

(e) applying for and accepting grants and other funds for Indian child welfare activities;

- (f) developing and maintaining a list of attorneys to represent indigent parents and Indian custodians in Indian child welfare proceedings;
- (g) making recommendations to the department on legislation and rules concerning Indian child welfare matters; and
- (h) performing other duties concerning Indian child welfare matters as determined by the director."

NEW SECTION. Section 51. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. Section 52. Codification instruction. [Sections 1 through ~~20 19 16 18~~] are intended to be codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 1 through ~~20 19 16 18~~].

COORDINATION SECTION. Section 53. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 111 AND [THIS ACT] ARE PASSED AND APPROVED AND IF BOTH CONTAIN A SECTION THAT AMENDS 47-1-104, THEN THE SECTIONS AMENDING 47-1-104 ARE VOID AND 47-1-104 MUST BE AMENDED AS FOLLOWS:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the director.

(2) The director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

~~(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425 ;~~

~~(iv)~~(iii) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

~~(v)~~(iv) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

~~(vi)~~(v) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

~~(vii)~~(vi) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112; and

~~(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;~~

~~(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and~~

~~(x)~~(vii) for a witness in a criminal grand jury proceeding, as provided in 46-4-304- ;

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; ~~and~~

(ix) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant to 41-3-422 and as required under the federal Indian Child Welfare Act and [section 8 9], as provided in 41-3-425;

(x) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116; and

(xi) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

~~NEW SECTION. SECTION 52. CONTINGENT VOIDNESS. (1) IF THE INDIAN CHILD WELFARE ACT OF 1978, PUBLIC LAW 95-608, IS DETERMINED BY THE UNITED STATES SUPREME COURT TO BE UNCONSTITUTIONAL OR UNENFORCEABLE IN ITS ENTIRETY IN HAALAND V. BRACKEEN, NO. 21-376, THEN [THIS ACT] IS VOID.~~

10 - END -



AN ACT ESTABLISHING THE MONTANA INDIAN CHILD WELFARE ACT; PROVIDING REQUIREMENTS FOR DETERMINING INDIAN STATUS AND INDIAN TRIBE; ESTABLISHING REQUIREMENTS FOR COURT PROCEEDINGS, EVIDENCE, AND CONSENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 40-6-405, 40-6-407, 40-6-413, 40-6-414, 40-6-1001, 40-7-135, 41-3-102, 41-3-103, 41-3-109, 41-3-128, 41-3-205, 41-3-301, 41-3-306, 41-3-307, 41-3-422, 41-3-423, 41-3-425, 41-3-427, 41-3-432, 41-3-437, 41-3-444, 41-3-609, 42-2-102, 42-2-604, 42-4-102, 42-4-103, 42-4-203, 42-4-209, 42-5-101, 42-5-107, 47-1-104, AND 52-2-117, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

WHEREAS, there is, at the present time, a court case before the United States Supreme Court known as *Haaland v. Brackeen*, No. 21-376, that has the potential to overturn or modify the Indian Child Welfare Act in its current form, and the Legislature seeks to provide guidance for Indian child protection cases in the interim as this case is decided. The Legislature does not expect this to be the final word on how we deal with Indian child welfare issues or how we seek to provide for all of Montana's children within the child protection system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 18] may be cited as the "Montana Indian Child Welfare Act".

Section 2. Legislative findings -- purpose. (1) The legislature recognizes that in possibly no other area of concurrent tribal and state law is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the

health, safety, or welfare of the child, or the interests of the child's tribe.

(2) The legislature further finds that when placement away from the parent or Indian custodian is necessary for the Indian child's safety, the state is committed to a placement that reflects and honors the unique values of the Indian child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.

Section 3. Definitions. As used in [sections 1 through 18], the following definitions apply:

(1) "Active efforts" means affirmative, active, thorough, and timely efforts meeting the requirements of [section 12] that are intended primarily to maintain or reunite an Indian child with the child's family and that are tailored to the facts and circumstances of the case.

(2) "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(3) (a) "Child custody proceeding" means any state or private proceeding, other than an emergency proceeding, that may culminate in a foster care placement, termination of parental rights, preadoptive placement, or adoptive placement.

(b) The term does not include a placement based on:

- (i) an act that, if committed by an adult, would be considered a crime; or
- (ii) an award, in a dissolution proceeding, of custody to one of the child's parents.

(4) "Court of competent jurisdiction" means a court that has jurisdiction over the relevant subject matter under federal, state, or tribal law.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Foster care placement" means an action removing an Indian child from the child's parent or Indian custodian for temporary placement in a foster home or institution or with a relative, guardian, conservator, or suitable other person under which the parent or Indian custodian may not have the child returned on demand but parental rights have not been terminated.

(7) "Indian" means a person who is a member of an Indian tribe or who is an Alaska Native and a

member of a regional corporation as established in 43 U.S.C. 1606.

(8) "Indian child" means an unmarried Indian person who is under 18 years of age and who is:

(a) a member of an Indian tribe; or

(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(9) (a) "Indian child's family" or "extended family member" means an individual defined by the law or custom of the Indian child's tribe as a relative of the Indian child.

(b) If the Indian child's tribe does not identify family members by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, cousin, stepparent, or stepgrandparent. A stepparent or stepgrandparent may be considered a family member even following termination of the marriage.

(10) "Indian child's tribe" means a tribe or tribes in which an Indian child is a member or is determined eligible for membership as provided in [section 6 5].

(11) "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law has legal or temporary physical custody of an Indian child or to whom the parent has transferred temporary care, physical custody, and control of the Indian child.

(12) (a) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians.

(b) The term includes an Alaska Native village as defined in 43 U.S.C. 1602.

(13) "Member" or "membership" means a determination by an Indian tribe that an individual is a member of or eligible for membership in that Indian tribe.

(14) (a) "Parent" means a biological parent of an Indian child or an individual who has lawfully adopted an Indian child, including adoptions made as tribal customary adoptions.

(b) The term does not include an unwed father whose paternity has not been acknowledged or established under Title 40, chapter 6, part 1, or the applicable laws of another state.

(15) "Preadoptive placement" means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement.

(16) "Termination of parental rights" means any action resulting in the termination of the parent-child relationship.

(17) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings. The term includes but is not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, and an administrative body of an Indian tribe vested with authority over child custody proceedings.

Section 4. Determination of Indian status -- confidentiality of records. (1) (a) A party seeking the foster care placement of, termination of parental rights over, or adoption of a child shall use due diligence to determine whether the child is an Indian child. The inquiry must be made in consultation with:

- (i) the child's parent or parents;
- (ii) an individual who has custody of the child or with whom the child resides;
- (iii) any other individual who reasonably may be expected to have information regarding the child's possible membership or eligibility for membership in an Indian tribe; and
- (iv) any Indian tribe of which the child may be a member or may be eligible for membership. The consultation with a tribe must be made by contacting the tribe in writing.

(b) The inquiries required under this subsection (1) must be documented in the record.

(2) Preliminary contacts for the purpose of using due diligence to determine a child's possible Indian status do not constitute legal notice as required by [section 7].

(3) A court shall ask each participant in an emergency proceeding or voluntary or involuntary child custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry must be made at the commencement of the proceeding and all responses must be on the record. The court shall instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(4) If there is reason to know the child is an Indian child but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall confirm, by way of a report, declaration, or testimony included in the record, that the department or other party used due diligence to identify and work with all tribes of which there is reason to know the child may be a member or eligible for membership

to verify whether the child is a member or eligible for membership.

(5) A court, on conducting the inquiry required in subsection (3), has reason to know that a child involved in an emergency proceeding or child custody proceeding may be an Indian child if:

(a) any participant in the proceeding, officer of the court involved in the proceeding, Indian tribe, Indian organization, or agency informs the court that:

(i) the child is an Indian child; or

(ii) it has discovered information indicating that the child is an Indian child;

(b) the child who is the subject of the proceeding gives the court reason to know the child is an Indian child;

(c) the court is informed that the residence or domicile of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(d) the court is informed that the child is or has been a ward of a tribal court;

(e) the court is informed that either of the parents or the child possesses an identification card indicating membership in an Indian tribe; or

(f) the court determines from additional information provided that the child may be an Indian child.

(6) (a) When seeking verification of a child's Indian status during a voluntary proceeding, the court shall keep relevant documents pertaining to the inquiry confidential and under seal if a consenting parent expresses either orally or in writing a desire for anonymity. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with [sections 1 through 18], including the obligation to verify whether the child is an Indian child.

(b) A tribe receiving information related to an inquiry of a child's status as an Indian child must keep documents and information confidential.

(7) A written determination by an Indian tribe regarding the child's status as an Indian child is conclusive that the child is an Indian child.

Section 5. Determination of Indian tribe. (1) If the Indian child is a member of or eligible for membership in only one tribe, that tribe must be designated as the Indian child's tribe.

(2) If the Indian child meets the definition of Indian child through more than one tribe, deference

must be given to the tribe in which the Indian child is already a member, unless otherwise agreed to by the tribes.

(3) (a) If the Indian child meets the definition of Indian child through more than one tribe because the child is a member in more than one tribe or the child is not a member of but is eligible for membership in more than one tribe, the court shall provide the opportunity in any involuntary child custody proceeding for the tribes to determine which tribe should be designated as the Indian child's tribe.

(b) If the tribes are able to reach an agreement, the court shall designate the agreed-on tribe as the Indian child's tribe.

(c) If the tribes are unable to reach an agreement, for the purposes of [sections 1 through 18] the court shall designate as the child's tribe the tribe with which the child has the more significant contacts as the Indian child's tribe. In making the designation, the court shall consider:

- (i) the preference of the parents for membership of the child;
- (ii) the length of the child's past residence or domicile on or near the reservation of each tribe;
- (iii) the tribal membership of the child's custodial parent or Indian custodian;
- (iv) the interest asserted by each tribe in the child custody proceeding;
- (v) whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and
- (vi) self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify with a tribe.

(4) A determination of the Indian child's tribe for the purposes of [sections 1 through 18] does not constitute a determination for any other purpose.

Section 6. Jurisdiction -- transfer of jurisdiction. (1) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe unless:

- (a) the tribe has consented to the state's concurrent jurisdiction pursuant to Public Law 280 or 25 U.S.C. 1919;
- (b) the tribe has expressly declined to exercise its exclusive jurisdiction; or

(c) the state is exercising emergency jurisdiction in compliance with [section 14].

(2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding, the Indian tribe may retain exclusive jurisdiction regardless of the residence or domicile of the child.

(3) Except as provided in subsection (5), in a child custody proceeding involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe on the motion of any of the following:

(a) either of the Indian child's parents;

(b) the Indian child's Indian custodian; or

(c) the Indian child's tribe.

(4) If the Indian child's tribe has not formally intervened, the moving party shall serve a copy of the motion and all supporting documents on the tribal court to which the moving party seeks transfer.

(5) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court may not transfer the proceeding.

(6) (a) If a state court believes or any party asserts that good cause to deny transfer exists, the reasons for that belief or assertion must be provided orally or in writing on the record and to the parties to the child custody proceeding. Any party to the child custody proceeding must have the opportunity to provide the court with the reasons that good cause exists to deny transfer of the proceeding.

(b) In determining whether good cause exists, the court may not consider:

(i) whether the child custody proceeding is at an advanced stage;

(ii) whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(iii) whether transfer could affect the placement of the child;

(iv) the child's cultural connections with the tribe or its reservation; or

(v) socioeconomic conditions or any negative perception of the tribal or bureau of Indian affairs social services or judicial systems.

(c) If the court denies transfer of jurisdiction, the court shall state its reasons for the denial orally on the record or in a written order.

(7) (a) Following entry of an order transferring jurisdiction to the Indian child's tribe and pending receipt of a tribal court order accepting jurisdiction, the state court:

- (i) may conduct additional hearings and enter orders that are in the best interests of the child and strictly comply with the requirements of the federal Indian Child Welfare Act and [sections 1 through 18]; and
- (ii) may not enter a final order in a child custody proceeding, except an order dismissing the proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the child was removed.

(b) On receipt of an order from a tribal court accepting jurisdiction, the court shall:

- (i) dismiss the child custody proceeding with prejudice; and
- (ii) expeditiously provide the tribal court with all records related to the proceeding, including but not limited to the pleadings and any court record. The state court shall work with the tribal court to ensure the transfer of the custody of the Indian child and the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

(8) If the Indian child's tribe accepts jurisdiction, the state court shall enter an order relieving the office of the state public defender and any public defender assigned pursuant to 41-3-425 and 47-1-104 from further representation.

(9) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody proceeding in compliance with the federal Indian Child Welfare Act, [sections 1 through 18], and any applicable state-tribal agreement.

Section 7. Notice. (1) The petitioning party shall provide notice of the initial petition filed in an involuntary child custody proceeding and a petition seeking termination of parental rights when the petitioning party knows or has reason to know that the child is or may be an Indian child. Notice must be provided as required in subsection (2) to:

- (a) the Indian child's parent or Indian custodian; and
- (b) the child's tribe or tribes.

(2) (a) Notice to the tribe must be made by certified mail, return receipt requested, and must meet the requirements of subsection (4). The notice must be sent to the person designated in the most current

Federal Register as the designated tribal agent for service of notice for the purposes of the federal Indian Child Welfare Act. The petitioning party shall file the return receipt with the court as proof of notice.

(b) Notice to the parent or Indian custodian must be made by personal service, or alternative means as provided in 41-3-422 if personal service cannot be accomplished, and must meet the requirements of subsection (4).

(c) If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice must be given to the secretary of the U.S. department of the interior by certified mail, return receipt requested, in accordance with the provisions of 25 CFR, part 23.

(d) Service of all other petitions, other than the initial petition and a petition for termination of parental rights, must be served on the tribe by first-class mail unless otherwise directed by the tribe's designated agent for notice.

(e) When notice of the initial petition and a petition for termination of parental rights to the parent or Indian custodian is required under this subsection (2), personal service, and alternative means of personal service when personal service cannot be accomplished, as provided in 41-3-422, takes the place of certified mail with return receipt requested.

(3) A foster care placement or a termination of parental rights proceeding may not be held until at least 10 days after receipt of the notice by the parent or Indian custodian, the tribe, and, if applicable, the secretary. The parent, Indian custodian, or tribe shall, on request, be granted up to 20 additional days to prepare for the proceeding. The 10-day notice requirement does not limit a court's ability to hold an emergency protective services hearing pursuant to 41-3-306.

(4) Notice provided under this section must be in clear and understandable language and include the following:

- (a) the child's name, date of birth, and place of birth;
- (b) all known names of the child's parents, including maiden, married, and former names or aliases;
- (c) the parents' dates of birth, places of birth, and tribal enrollment numbers, if known;
- (d) the names, dates of birth, places of birth, and tribal enrollment information of other direct lineal ancestors of the child, if known;

(e) the name of each Indian tribe in which the child is a member or may be eligible for membership if a biological parent is a member; and

(f) a copy of the petition, complaint, or other document by which the child custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing.

Section 8. Full faith and credit. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe that are applicable to Indian child custody proceedings.

Section 9. Right to counsel. In a child custody proceeding under [sections 1 through 18] in which the court determines that the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian has the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child pursuant to 41-3-425.

Section 10. Right of access to evidence. Each party to a child custody proceeding involving an Indian child has the right to examine all reports or other documents filed with the court on which any decision with respect to the proceeding may be based.

Section 11. Qualified expert witness -- requirements -- prohibitions. (1) A qualified expert witness is an individual who provides testimony in a child custody proceeding under [sections 1 through 18]. The purpose of the testimony is to assist a court in determining whether the continued custody of the child by or the return of the child to the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The parties may not waive the requirement for the qualified expert witness testimony.

(2) The petitioning party shall consult with the Indian child's tribe on the selection of the qualified expert witness, including asking whether the tribe has a list of preferred qualified expert witnesses. To the extent possible, the petitioning party shall use an individual preferred by the tribe.

(3) A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and must be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe.

- (4) (a) If the petitioner is the department, the child protection specialist assigned to the case and the child protection specialist's supervisor may not testify as qualified expert witnesses in the case.
- (b) Nothing in this subsection (4) may be construed as barring:
- (i) the child protection specialist or the child protection specialist's supervisor from testifying as an expert witness for other purposes in a proceeding under [sections 1 through 18]; or
- (ii) the petitioner or another party in a proceeding under [sections 1 through 18] from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court, including the determination of whether the continued custody of the Indian child by or return of the Indian child to the parent, parents, or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

Section 12. Active efforts. (1) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that the efforts have proven unsuccessful.

(2) The court shall make written findings that the petitioning party has provided active efforts and the efforts must be documented in detail in the record.

(3) If the department is involved in the child custody proceeding, active efforts must include assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.

(4) (a) To the maximum extent possible, active efforts must be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include but are not limited to:

- (i) conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- (ii) identifying appropriate services and helping the parents to overcome barriers, including actively

assisting the parents in obtaining the services;

(iii) identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;

(iv) conducting or causing to be conducted a diligent search for the Indian child's extended family members and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;

(v) offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's tribe;

(vi) taking steps to keep siblings together whenever possible;

(vii) supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(viii) identifying community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the child's family, in accessing and using the resources;

(ix) monitoring progress and participation in services;

(x) considering alternative ways to address the needs of the Indian child's parents and, when appropriate, the family, if the optimum services do not exist or are not available; and

(xi) providing postreunification services and monitoring.

(b) Referral to a service or program does not constitute an active effort if the referral was the sole action taken.

Section 13. Evidentiary requirements. (1) A court may not order a foster care placement of an Indian child unless:

(a) the petitioning party has provided clear and convincing evidence that active efforts were made to provide remedial services and rehabilitative programs to prevent the breakup of an Indian family and that the efforts were unsuccessful; and

(b) clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, to demonstrate that continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(2) The court may not terminate parental rights of the parents of an Indian child unless evidence beyond a reasonable doubt is presented that:

(a) active efforts were made to prevent the breakup of the Indian family and the efforts were unsuccessful; and

(b) continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The evidence must include testimony of one or more qualified expert witnesses.

(3) (a) Evidence required under this section must show a causal relationship between the specific conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the child who is the subject of the child custody proceeding.

(b) Evidence showing only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

Section 14. Emergency removal of Indian child. (1) Nothing in [sections 1 through 18] may be construed to prevent the department from removing an Indian child from the Indian child's parent or Indian custodian or prevent the emergency placement of the Indian child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the Indian child.

(2) An emergency removal or placement of an Indian child under state law must terminate immediately when the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(3) A state court shall:

(a) make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

(b) promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended;

(c) at any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child; and

(d) immediately terminate or direct the department to terminate the emergency removal if the court or department possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(4) An emergency proceeding may be terminated by any of the following actions:

(a) initiation of a child custody proceeding subject to the provisions of the federal Indian Child Welfare Act and [sections 1 through 18];

(b) transfer of the child to the jurisdiction of the appropriate Indian tribe; or

(c) restoring the child to the parent or Indian custodian.

(5) A petition for a court order authorizing the emergency removal or placement, or its accompanying documents, must contain a statement of the risk of imminent physical damage or harm to the Indian child, any evidence that the emergency removal or placement continues to be necessary to prevent the damage or harm, and if available:

(a) the full name, age, and last known address of the Indian child;

(b) the name and address of the child's parents and Indian custodians, if any;

(c) the steps taken to provide notice to the child's parents, Indian custodians, and tribe about the emergency proceeding;

(d) if the child's and Indian custodians are unknown, a detailed explanation of the efforts made to locate and contact the individuals, including contact with the appropriate bureau of Indian affairs regional director;

(e) the residence or the domicile of the Indian child;

(f) if either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the tribe affiliated with that reservation or village;

(g) the tribal affiliation of the child and of the parents or Indian custodians;

(h) a specific and detailed account of the circumstances that led the agency responsible for the

emergency removal of the child to remove the child;

(i) if the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of the efforts made and being made to contact the tribe and transfer the child to the tribe's jurisdiction; and

(j) a statement of the efforts made to assist the parents or Indian custodians so the Indian child may be safely returned to the parents or Indian custodians.

(6) Contact made to provide notice of an emergency removal and reported pursuant to subsection (5)(c) does not constitute the notice required under [section 7] for the purposes of subsequent dependency, termination of parental rights, or adoption proceedings.

(7) An emergency proceeding regarding an Indian child may not be continued for more than 30 days unless the court determines that:

(a) restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;

(b) the court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and

(c) it has not been possible to initiate a child custody proceeding.

Section 15. Consent. (1) At an involuntary foster care placement hearing, a stipulation or consent by the parent or Indian custodian is not valid unless the court certifies on the record that the terms and consequences of the stipulation or consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall certify on the record that the parent or Indian custodian fully understood the explanation in English or that the explanation was translated into a language that the parent or Indian custodian understood.

(2) In a voluntary proceeding for foster care placement or termination of parental rights, consent by a parent or Indian custodian is not valid unless the consent is:

(a) executed in writing and recorded before a judge of a court of competent jurisdiction; and

(b) accompanied by the judge's written certificate that:

(i) the terms and consequences of the consent were fully explained in detail and were fully

understood by the parent or Indian custodian; and

(ii) the parent or Indian custodian fully understood the explanation in English or that the explanation was translated into a language that the parent or Indian custodian understood.

(3) Voluntary consent for release of custody given prior to or within 10 days after the birth of an Indian child may not be considered valid.

(4) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care placement at any time. On withdrawal of consent, the Indian child must be returned to the parent or Indian custodian.

(5) In a voluntary proceeding for termination of parental rights to or adoptive placement of an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an order terminating parental rights or a final decree of adoption, and the Indian child must be returned to the parent.

(6) (a) After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption on the grounds that consent was obtained through fraud or duress. On a finding that consent was obtained through fraud or duress, the court shall vacate the decree and return the Indian child to the parent.

(b) An adoption that has been effective for at least 2 years may not be invalidated under this section unless otherwise allowed by law.

Section 16. Improper removal of Indian child. If a petitioner in a child custody proceeding under [sections 1 through 18] has improperly removed an Indian child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the Indian child to the parent or Indian custodian unless returning the Indian child to the parent or Indian custodian would subject the Indian child to substantial and immediate danger or threat of substantial or immediate danger.

Section 17. Removal of Indian child from adoptive or foster care placement. (1) If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the

termination of their parental rights to the Indian child, the biological parent or prior Indian custodian may petition to have the Indian child returned to the custody of the parent or Indian custodian. The court shall grant the request unless there is a showing by clear and convincing evidence that return of custody to the biological parent or Indian custodian is not in the best interests of the child.

(2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home for the purposes of further foster care or a preadoptive or adoptive placement, the placement must be made in accordance with [sections 1 through 18] unless an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

Section 18. Placement preferences. (1) When an emergency removal, foster care placement, or preadoptive placement of an Indian child is necessary, the petitioning party shall, in the absence of good cause to the contrary, place the Indian child in the least restrictive setting that:

- (a) most closely approximates a family situation;
- (b) is in reasonable proximity to the Indian child's home; and
- (c) allows for the Indian child's special needs, if any, to be met.

(2) In a foster care or preadoptive placement, preference must be given, in the absence of good cause to the contrary, to the Indian child's placement with one of the following, in descending order of priority:

- (a) an Indian child's extended family member;
- (b) a foster home licensed, approved, or specified by the Indian child's tribe;
- (c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (d) an institution for children approved by an Indian tribe or operated by an Indian organization that

has a program suitable to meet the Indian child's needs.

(3) In the absence of good cause to the contrary, in an adoptive or other permanent placement of an Indian child, preference must be given to a placement with one of the following, in descending order of priority:

- (a) extended family members;
- (b) an Indian family of the same tribe as the Indian child;
- (c) another Indian family.

(4) Notwithstanding the placement preferences listed in subsections (2) and (3), if a different order of placement preference is established by the Indian child's tribe, the court or agency implementing the placement shall follow the order of preference established by the tribe if the placement is in the least restrictive setting appropriate to the particular needs of the Indian child and within reasonable proximity to the child's home.

(5) When appropriate, the preference of the Indian child or the child's parent must be considered by the court.

(6) The standards to be applied in meeting the preference requirements of this section must be the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside or with which the parent or extended family members maintain social and cultural ties.

(7) Nothing in this section prevents the department or the court from placing an Indian child with a parent to effectuate a permanency plan regardless of the parent's relationship to the Indian child's tribe.

(8) (a) If any party asserts that good cause to not follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child custody proceeding and the court.

(b) The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:

(i) the request of one or both of the Indian child's parents on attestation that they have reviewed the placement options, if any, that comply with the order of preference provided for in subsections (2) and (3);

(ii) the request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

(iii) the presence of a sibling attachment that can be maintained only through a particular placement;

(iv) the extraordinary physical, mental, or emotional needs of the Indian child, including but not limited to specialized treatment services that may be unavailable in the community where families who meet the

placement preferences live; or

(v) the unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but no suitable placement was found. For the purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

Section 19. Section 40-6-405, MCA, is amended to read:

"40-6-405. Surrender of newborn to emergency services provider -- temporary protective custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

(2) The emergency services provider shall make a reasonable effort to do all of the following:

(a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;

(b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;

(c) if possible, ascertain whether the newborn has a tribal affiliation and, if so, ascertain relevant information pertaining to any Indian heritage of the newborn;

(d) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:

(i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn

for adoption, including proceedings to terminate parental rights;

(ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;

(iii) the parent may not receive personal notice of the court proceedings begun by the department;

(iv) information that the parent provides to an emergency services provider will not be made public;

(v) a parent may contact the department for more information and counseling; and

(vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 18].

(3) After providing a parent with the information described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:

(a) encourage the parent to provide any relevant family or medical information, including information regarding any tribal affiliation;

(b) provide the parent with information that the parent may receive counseling or medical attention;

(c) inform the parent that information that the parent provides will not be made public;

(d) ask the parent for the parent's name;

(e) inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the parent to identify the other parent;

(f) inform the parent that the department can provide confidential services to the parent; and

(g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a hearing to terminate parental rights."

Section 20. Section 40-6-407, MCA, is amended to read:

"40-6-407. Assumption of care, custody, and control by department -- placement of child -- presumptions -- Montana birth certificate. (1) Upon receipt of notice under 40-6-406, the department shall:

(a) immediately assume the care, control, and temporary protective custody of the newborn;

(b) if a parent is known and willing, immediately meet with the parent;

(c) make a temporary placement of the newborn;

(d) immediately request assistance from law enforcement officials to investigate and determine, through the national center for missing and exploited children and any other national and state missing children information programs, whether the newborn is a missing child;

(e) not later than 48 hours after assuming the care, control, and temporary protective custody of the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, and, if applicable, [sections 1 through 18], requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date; and

(f) within 30 days, make reasonable efforts to identify and locate a parent who did not surrender the newborn. If the identity and address of that parent are unknown, the department shall provide notice by publication in a newspaper of general circulation in the county where the newborn was surrendered.

(2) The department, after assuming the care, custody, and control of a newborn under subsection (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not required to search for relatives of the newborn as a placement or permanency option or to implement other placement requirements that give preference to relatives if the department does not have information as to the identity of the newborn or either of the newborn's parents. The department shall place the newborn with prospective adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding the newborn's medical history, date of birth, or age if the department has that information.

(3) A newborn surrendered under 40-6-405 is presumed to have been born in Montana unless the biological parent otherwise informs the department or the emergency services provider to whom the newborn is surrendered.

(4) A Montana birth certificate may be issued based on the presumption of birth in Montana as provided in subsection (3). A birth certificate issued to a newborn surrendered under 40-6-405 must provide a date of birth based on either the actual date of birth, if known, or on the date of birth determined by the physician who performs the medical examination of the newborn under 40-6-406."

Section 21. Section 40-6-413, MCA, is amended to read:

"40-6-413. Custody action -- order. Based on the court's finding of the newborn's best interest under 40-6-412, the court may issue an order:

(1) granting legal or physical custody, or both, of the newborn to the parent and either retaining or relinquishing jurisdiction; or

(2) denying custody of the newborn to the parent and referring the matter to the department or county attorney for proceedings under Title 41, chapter 3, and, if applicable, [sections 1 through 18]."

Section 22. Section 40-6-414, MCA, is amended to read:

"40-6-414. Presumption of waiver of parental rights -- department to file petition. (1) ~~A-Except as provided in [section 15],~~ a parent who surrenders a newborn under 40-6-405 and who does not file a custody action under 40-6-411 is presumed to have knowingly waived the parent's parental rights to the newborn.

(2) If a custody action is not filed under 40-6-411 or if the parent is denied custody of the newborn under 40-6-413, the department shall file a petition under Title 41, chapter 3, part 4, or, if applicable, [sections 1 through 18], requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date."

Section 23. Section 40-6-1001, MCA, is amended to read:

"40-6-1001. Petition for termination -- criteria -- process. (1) A district court may order a termination of the parent-child legal relationship after the filing of a petition pursuant to this section alleging the factual grounds for termination as provided for in subsection (2).

(2) Grounds for termination pursuant to this section exist when the parent of a child:

(a) is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born; or

(b) at a fact-finding hearing is found by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act and [sections 1 through 18], if applicable, to have committed an act of sexual intercourse without consent, sexual assault, or incest that caused the child to be conceived.

(3) The court's order must state the reasons for the decision.

(4) The victim of the crime or act may file a petition pursuant to this section. If the victim is a minor, the victim's parent or guardian may file a petition on the victim's behalf.

(5) The respondent to the petition has the right to counsel in all proceedings held pursuant to the petition.

(6) Before termination of the parent-child legal relationship may be ordered, the court shall determine whether the provisions of 40-6-1002 and 40-6-1003 have been followed.

(7) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

(8) (a) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except:

(i) the right of the child to inherit from the parent; and
(ii) that nothing in this section may be construed to relieve the parent whose rights are terminated as provided in this part of any child support obligations as provided in Title 40, chapters 4 and 5.

(b) An order or decree entered pursuant to this part may not disentitle a child to any benefit due to the child from a third person, including but not limited to an Indian tribe, an agency, a state, or the United States."

Section 24. Section 40-7-135, MCA, is amended to read:

"40-7-135. Application to Indian tribes. (1) A child custody proceeding that pertains to an Indian child as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 3] is not subject to this chapter to the extent that it is governed by the federal Indian Child Welfare Act or [sections 1 through 18].

(2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, 40-7-134 through 40-7-140, and part 2 of this chapter.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this chapter."

Section 25. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

- (1) (a) "Abandon", "abandoned", and "abandonment" mean:
 - (i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;
 - (ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;
 - (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or
 - (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.
- (b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.
- (2) "A person responsible for a child's welfare" means:
 - (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the child resides;
 - (b) a person providing care in a day-care facility;
 - (c) an employee of a public or private residential institution, facility, home, or agency; or
 - (d) any other person responsible for the child's welfare in a residential setting.
- (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.
- (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.
- (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the

state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare;

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(C) any form of child sex trafficking or human trafficking.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act ~~is or~~ [sections 1 through 18] are applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Child protection specialist" means an employee of the department who investigates allegations of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

(9) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(10) "Department" means the department of public health and human services provided for in 2-15-

2201.

(11) "Family engagement meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(12) "Indian child" ~~means any unmarried person who is under 18 years of age and who is either:~~

~~(a) a member of an Indian tribe; or~~

~~(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe~~
has the meaning provided in [section 3].

(13) "Indian child's tribe" ~~means:~~

~~(a) the Indian tribe in which an Indian child is a member or eligible for membership; or~~

~~(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts~~
has the meaning provided in [section 3].

(14) "Indian custodian" ~~means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent~~
has the meaning provided in [section 3].

(15) "Indian tribe" ~~means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:~~

~~(a) the state of Montana; or~~

~~(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law~~
has the meaning provided in [section 3].

(16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(17) "Parent" means a biological or adoptive parent or stepparent.

(18) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(19) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(20) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(21) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(23) (a) "Protective services" means services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, written prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act or [sections 1 through 18] means:

~~(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;~~

~~(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or~~

~~(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general~~

(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to a family organization and child-rearing practices;

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to

children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

(26) "Qualified individual" means a trained professional or licensed clinician who:

(a) has expertise in the therapeutic needs assessment used for placement of youth in a therapeutic group home;

(b) is not an employee of the department; and

(c) is not connected to or affiliated with any placement setting in which children are placed.

(27) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(28) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(29) "Safety and risk assessment" means an evaluation by a child protection specialist following an initial report of child abuse or neglect to assess the following:

(a) the existing threat or threats to the child's safety;

(b) the protective capabilities of the parent or guardian;

(c) any particular vulnerabilities of the child;

(d) any interventions required to protect the child; and

(e) the likelihood of future physical or psychological harm to the child.

(30) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(31) "Sexual exploitation" means:

(a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603;

(b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

(c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

(32) "Therapeutic needs assessment" means an assessment performed by a qualified individual within 30 days of placement of a child in a therapeutic group home that:

(a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool;

(b) determines whether the needs of the child can be met with family members or through placement in a youth foster home or, if not, which appropriate setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals for the child as specified in the child's permanency plan; and

(c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

(33) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(34) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the

treatment itself under the circumstances would be inhumane. For purposes of this subsection (34), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(35) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 26. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction and venue. (1) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 18], in all matters arising under this chapter, a person is subject to a proceeding under this chapter and the district court has jurisdiction over:

- (a) a youth who is within the state of Montana for any purpose;
- (b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court;
- (c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose;
- (d) a youth or youth's parent or guardian who resides in Montana;
- (e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in Montana.

(2) Venue is proper in the county where a youth is located or has resided within 180 days before the filing of a petition under this part or a county where the youth's parent or guardian resides or has resided within 180 days before the filing of a petition under this part."

Section 27. Section 41-3-109, MCA, is amended to read:

"41-3-109. Proceedings subject to Indian Child Welfare Act ~~Acts~~. If a proceeding under this

chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 3], the proceeding is subject to the federal Indian Child Welfare Act and [sections 1 through 18]."

Section 28. Section 41-3-128, MCA, is amended to read:

"41-3-128. Certificate requirements -- supervision -- fees. (1) An applicant for certification as a child protection specialist shall:

(a) successfully complete a course in child protection, as defined by the department by rule, which must include training in:

- (i) ethics;
- (ii) governing statutory and regulatory framework;
- (iii) role of law enforcement;
- (iv) crisis intervention techniques;
- (v) childhood trauma research;
- (vi) evidence-based practices for family preservation and strengthening; and
- (vii) the provisions of the federal Indian Child Welfare Act, 25 U.S.C. 1902, et seq., and [sections 1 through 18]; and

(b) demonstrate the applicant's ability to perform all essential functions of the certified child protection role by earning a passing score on a competency examination developed pursuant to 41-3-130.

(2) As a prerequisite to the issuance of a certificate, the department shall require the applicant to submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(3) An applicant who has a history of criminal convictions has the opportunity to demonstrate to the department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny the certificate if it determines that the applicant is not sufficiently rehabilitated."

Section 29. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken

under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

- (g) approved foster and adoptive parents who are or may be providing care for a child;
- (h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;
- (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;
- (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;
- (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family engagement meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;
- (l) the coroner or medical examiner when determining the cause of death of a child;
- (m) a child fatality review team recognized by the department;
- (n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;
- (o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the department.
- (p) the news media, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;
- (q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;
- (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act or [sections 1 through 18];

- (s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;
 - (t) an attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;
 - (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;
 - (v) a school employee participating in an interview of a child by a child protection specialist, county attorney, or peace officer, as provided in 41-3-202;
 - (w) a member of a county or regional interdisciplinary child information and school safety team formed under the provisions of 52-2-211;
 - (x) members of a local interagency staffing group provided for in 52-2-203;
 - (y) a member of a youth placement committee formed under the provisions of 41-5-121; or
 - (z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.
- (4) (a) The records described in subsection (3) must be disclosed to a member of the United States congress or a member of the Montana legislature if all of the following requirements are met:
- (i) the member receives a written inquiry regarding a child and whether the laws of the United States or the state of Montana that protect children from abuse or neglect are being complied with or whether the laws need to be changed to enhance protections for children;
 - (ii) the member submits a written request to the department requesting to review the records relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the child whose records are to be reviewed, and any other information that will assist the department in locating the records.
 - (iii) before reviewing the records, the member:
 - (A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and
 - (B) receives from the department an orientation of the content and structure of the records.
 - (b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for

the member to view but may not be copied, recorded, photographed, or otherwise replicated by the member, and must remain solely in the department's possession. The member must be allowed to view the records in the local office where the case is or was active.

(c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date the written request to review records was received by the department.

(5) (a) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

- (i) the attorney general;
- (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect occurred;
- (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred; or
- (iv) the office of the child and family ombudsman.

(b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

- (i) the death of the child as a result of child abuse or neglect;
- (ii) a sexual offense, as defined in 46-23-502, against the child;
- (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502;

or

(iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

(c) (i) The department shall promptly disclose the results of an investigation to an individual described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the determination that:

(A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or

(B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession of a Schedule I or Schedule II drug that is prohibited by state law.

(ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have contact with drug paraphernalia as defined in 45-10-101.

(d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be released within 5 business days to the county attorney of the county in which the acts that are the subject of a report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a) and to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211.

(ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault shall report to the department as provided in this part without disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.

(iii) When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

(6) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(7) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(8) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(9) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a) and (5). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(10) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (9) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(11) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost."

Section 30. Section 41-3-301, MCA, is amended to read:

" 41-3-301. (Temporary) Emergency protective service. (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must:

- (a) include the reason for removal;
- (b) include information regarding the option for an emergency protective services hearing within 5 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;
- (c) provide contact information for the child protection specialist, the child protection specialist's supervisor, and the office of state public defender; and
- (d) advise the parents, parent, guardian, or other person having physical or legal custody of the

child that the parents, parent, guardian, or other person:

- (i) has the right to receive a copy of the affidavit as provided in subsection (6);
 - (ii) has the right to attend and participate in an emergency protective services hearing, if one is requested, and the show cause hearing, including providing statements to the judge;
 - (iii) may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services; and
 - (iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.
- (2) If a child protection specialist, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:
- (a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;
 - (b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and
 - (c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.
- (3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 18], if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the child protection specialist shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

41-3-301. (Effective July 1, 2023) Emergency protective service. (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must:

(a) include the reason for removal;

(b) include information regarding the emergency protective services and show cause hearings and the purpose of the hearings; and

(c) advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services.

(2) If a child protection specialist, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-422 within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 18], if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the child protection specialist shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 31. Section 41-3-306, MCA, is amended to read:

"41-3-306. (Temporary) Emergency protective services hearing on request -- exceptions. (1) (a) If requested by the parents, parent, guardian, or other person having physical or legal custody of a child removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5 business days.

(b) The department shall provide notification of the option for the hearing as required under 41-3-301.

- (c) A hearing is not required if the child is released prior to the time of the requested hearing.
- (2) The hearing may be held in person, by videoconference, or, if no other means are available, by telephone.
- (3) The child and the child's parents, parent, guardian, or other person having physical or legal custody of the child must be represented by counsel at the hearing.
- (4) If the court determines that continued out-of-home placement is needed, the court shall:
 - (a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and
 - (b) review the availability of options for a kinship placement and make recommendations if appropriate.
- (5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian, or other person having physical or legal custody of the child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.
- (6) If the court determines continued removal is not appropriate, the child must be immediately returned to the parents, parent, guardian, or other person having physical or legal custody of the child.
- (7) This section does not apply:
 - (a) in judicial districts that are holding voluntary prehearing conferences pursuant to 41-3-307; or
 - (b) to cases involving an Indian child who is subject to the federal Indian Child Welfare Act.
- (8) The emergency protective services hearing is an emergency proceeding for the purposes of [sections 1 through 18] and is not subject to the notice requirements of [sections 1 through 18]. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

41-3-306. (Effective July 1, 2023) Emergency protective services hearing -- exception. (1) (a) A district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to 41-3-301 to determine whether there is probable cause to continue the removal beyond 5 business days.

- (b) The department shall provide notification of the hearing as required under 41-3-301.
- (c) A hearing is not required if the child is released prior to the time of the required hearing.
- (2) The hearing may be held in person, by videoconference, or, if no other means are available, by

telephone.

(3) The child and the child's parents, parent, guardian, or other person having physical or legal custody of the child must be represented by counsel at the hearing.

(4) If the court determines that continued out-of-home placement is needed, the court shall:

(a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and

(b) review the availability of options for a kinship placement and make recommendations if appropriate.

(5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.

(6) If the court determines continued removal is not appropriate, the child must be immediately returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

(7) This section does not apply to cases involving an Indian child who is subject to the federal Indian Child Welfare Act.

(8) The emergency protective services hearing is an emergency proceeding for the purposes of [sections 1 through 18] and is not subject to the notice requirements of [sections 1 through 18]."

Section 32. Section 41-3-307, MCA, is amended to read:

"41-3-307. (Temporary) Voluntary prehearing conferences -- pilot project counties. (1) The parents, parent, guardian, or other person having physical or legal custody of a child who has been removed from the home pursuant to 41-3-301 may participate in a conference within 5 days of the child's removal and before a show cause hearing held by the court if the court is participating in a pilot project testing the effectiveness of prehearing conferences.

(2) A prehearing conference may be held under this section only if it involves:

(a) the parents, parent, guardian, or other person having physical or legal custody of the child;

(b) the person's legal counsel;

- (c) the county attorney's office; and
- (d) a department social worker.
- (3) To the greatest degree possible using available funding, the meetings must be conducted by an independent and trained facilitator.
- (4) At a minimum, the meetings must involve discussion of:
 - (a) the child's current placement and options for continued placement if the child remains out of the home;
 - (b) whether other options exist for an in-home safety plan or resource that may allow the child to remain in the home;
 - (c) parenting time schedules; and
 - (d) treatment services for the family.
- (5) This section does not apply to cases involving an Indian child who is subject to the federal Indian Child Welfare Act or [sections 1 through 18].
- (6) This section applies to a district court participating in the prehearing conference pilot project funded by the court improvement program on May 14, 2021, and to any district court in a rural county or multicounty district that chooses to hold conferences in accordance with this section on or after that date.
(Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)"

Section 33. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

- (i) immediate protection and emergency protective services, as provided in 41-3-427;
- (ii) temporary investigative authority, as provided in 41-3-433;
- (iii) temporary legal custody, as provided in 41-3-442;
- (iv) long-term custody, as provided in 41-3-445;
- (v) termination of the parent-child legal relationship, as provided in 41-3-607;
- (vi) appointment of a guardian pursuant to 41-3-444;
- (vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 3], the standards of proof required for legal relief under the federal Indian Child Welfare Act and [sections 1 through 18] apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act and [sections 1 through 18], if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require. If personal service cannot be made upon a putative father, the court may not provide for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the opinion of the court, the interests of justice require counsel to be appointed or assigned.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the

best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must state:

(a) the nature of the alleged abuse or neglect and of the relief requested;

(b) the full name, age, and address of the child and the name and address of the child's parents or the guardian or person having legal custody of the child; and

(c) the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1 through 18], if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the

permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 34. Section 41-3-423, MCA, is amended to read:

"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. (1) (a) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state.

(b) (i) For the purposes of this subsection (1), the term "reasonable efforts" means the department shall in good faith develop and implement voluntary services agreements and treatment plans that are designed to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing voluntary services agreements and treatment plans.

(ii) The term includes but is not limited to:

(A) written prevention plans;

(B) development of individual written case plans specifying state efforts to preserve or reunify families;

(C) placement in the least disruptive setting possible with priority given to family placement as provided in 41-3-439;

(D) provision of services pursuant to a case plan that is designed to address the parent's treatment and other needs precluding the parent from safely parenting, including but not limited to individual and family therapy, parent education, substance abuse treatment, and trauma-related services; and

(E) periodic review of each case to ensure timely progress toward reunification or permanent placement.

(c) In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act or [sections 1 through 18], the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying in-state and out-of-state placements, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

Section 35. Section 41-3-425, MCA, is amended to read:

"41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the

right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsections (3) through (5), the court shall immediately appoint the office of state public defender to assign counsel for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act or [sections 1 through 18].

(3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

(5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 18], a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:

(a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

(b) the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel."

Section 36. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services -- order -- service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's

health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and must be supported by an affidavit signed by a representative of the department stating in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 18], clear and convincing evidence that a child is abused or neglected or is in danger of being abused or neglected. The affidavit of the department representative must contain information, if any, regarding statements made by the parents about the facts of the case.

(c) If from the alleged facts presented in the affidavit it appears to the court that there is probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 18], clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 18], clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected, the court shall dismiss the petition.

(d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of the petition and affidavit.

(e) The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person having physical or legal custody of the child may have a support person present during any in-person meeting with a child protection specialist concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the child protection specialist.

(2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 18], clear and convincing evidence based on the petition

and affidavit, the court may issue an order for immediate protection of the child. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 18], clear and convincing evidence, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

- (a) the right of entry by a peace officer or department worker;
 - (b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;
 - (c) the right of the department to locate, contact, and share information with any extended family members who may be considered as placement options for the child;
 - (d) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;
 - (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;
 - (f) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;
 - (g) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and
 - (h) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.
- (3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.
- (4) The order for immediate protection of the child must require the person served to comply

immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422 or, if the case involves an Indian child, as provided in [section 7]."

Section 37. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing -- order. (1) (a) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 18], a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 18], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act or [sections 1 through 18], if applicable.

(3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case

and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1 through 18], if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act or [section 7], if applicable, have been met.

(5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 18], if applicable, the court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having

physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 38. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication -- temporary disposition -- findings -- order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act or [sections 1 through 18], if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person

appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person;

(ii) the continuity of care the person has offered the child by providing permanency or stability in residence, schooling, and activities outside of the home; and

(iii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child

or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents.

(8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 18], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child."

Section 39. Section 41-3-444, MCA, is amended to read:

"41-3-444. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1)

The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-438, 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

- (b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (9);
- (c) the child has been adjudicated a youth in need of care;
- (d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;
- (e) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;
- (f) it is in the best interests of the child to remain or be placed with the potential guardian;
- (g) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and
- (h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 3], the Indian child's tribe has received notification from the state of the initiation of the proceedings.

(3) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint in the same manner provided for in 41-3-438(4).

(4) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except for the department's provision of a financial subsidy, if any, pursuant to subsection (9).

(5) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

(6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent

have not been terminated, and other persons directly interested in the welfare of the child.

(7) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(8) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-438.

(9) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

(10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

Section 40. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act or [sections 1 through 18], if applicable, that any of the following circumstances exist:

- (a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;
- (b) the child has been abandoned by the parents;
- (c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;
- (d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);
- (e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or
- (f) the child is an adjudicated youth in need of care and both of the following exist:
 - (i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and
 - (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent within a reasonable time;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred.

(5) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 18], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child."

Section 41. Section 42-2-102, MCA, is amended to read:

"42-2-102. Proceedings subject to Indian Child Welfare Act Acts. A proceeding under this title that pertains to an Indian child, as defined in ~~the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq.,~~ [section 3], is subject to ~~that act~~ the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., and [sections 1 through 18]."

Section 42. Section 42-2-604, MCA, is amended to read:

"42-2-604. Contents of petition for termination of parental rights. (1) The petition for termination of parental rights must state:

- (a) the identity of the petitioner;
- (b) the date and location of the birth of the child;
- (c) the date of the relinquishment by the birth mother or relinquishing parent;
- (d) the current location of the child;
- (e) the names and locations, if known, of any putative or presumed father of the child;
- (f) whether a parent is one from whom consent is not required;
- (g) whether court orders from any other proceeding have been issued terminating parental rights

to the child that is the subject of the petition;

(h) any other evidence supporting termination of the legal rights that a person has with regard to the child; and

- (i) a request for temporary custody of the child prior to the adoption.

(2) The petitioner shall file with the petition for termination of parental rights the following documents received in support of the petition:

- (a) any relinquishments and consents to adoption;
- (b) any denials of paternity;
- (c) any acknowledgments of paternity and denial of parental rights;
- (d) any affidavits from the putative father registry that have been executed by the department;
- (e) the adoptive decision support services report required under 42-2-409;

- (f) proof of prior service of any notice or acknowledgment of service or waiver of service received;
- and
- (g) proof of compliance with the federal Indian Child Welfare Act of 1978, [sections 1 through 18], and Interstate Compact on the Placement of Children, if applicable."

Section 43. Section 42-4-102, MCA, is amended to read:

"42-4-102. Duties of placing parent. (1) A parent who is directly placing a child for adoption shall execute a voluntary relinquishment and consent to adopt, including:

- (a) receiving the adoptive decision support services required by 42-2-409; and
- (b) if the parent is a minor, being advised by legal counsel other than the attorney representing the prospective adoptive parent.

(2) A placing parent shall identify and provide information on the location of any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including:

- (a) any current spouse;
- (b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child; and

(c) any adoptive parent.

(3) A placing parent shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 18].

(4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

- (a) the disclosures of medical and social history required pursuant to 42-3-101;
- (b) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth; and

(c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

(5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice of parental placement.

(6) A parent placing a child for adoption in a direct parental placement adoption shall file a

disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent or any person acting on behalf of the prospective adoptive parent.

(7) Subject to the limitations set in 42-7-102, expenses for adoptive decision support services, postadoptive counseling, outpatient mental health services, legal fees, and the reasonable costs of preparing reports documenting the required disclosures of medical and social history and the disclosures documenting disbursements are allowable expenses that can be paid for by the prospective adoptive parent."

Section 44. Section 42-4-103, MCA, is amended to read:

"42-4-103. Direct parental placement -- information to be filed. (1) A parent who proposes to place a child for adoption with a prospective adoptive parent who resides in Montana and who is not the child's stepparent or an extended family member shall file with the court of the county in which the prospective adoptive parent or the parent making the placement resides the following:

- (a) a notice of parental placement containing the following information:
 - (i) the name and address of the placing parent;
 - (ii) the name and address of each prospective adoptive parent;
 - (iii) the name and address or expected date and place of birth of the child;
 - (iv) the identity and information on the location of any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including any current spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child, and any adoptive parent;
 - (v) all relevant information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 18]; and
 - (vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);
- (b) a relinquishment and consent to adoption of the child by the adoptive parent;
- (c) the adoptive decision support services report required by 42-2-409;
- (d) the medical and social history disclosures required by 42-3-101;

- (e) a report of disbursements identifying all payments made to or to the benefit of the placing parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement by each person furnishing information in the report attesting to the truthfulness of the information furnished by that person;
 - (f) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth;
 - (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and
 - (h) the preplacement evaluation.
- (2) The notice of parental placement must be signed by the parent making the placement."

Section 45. Section 42-4-203, MCA, is amended to read:

"42-4-203. Duties of placing parent. (1) A parent who is placing a child for adoption shall comply with the provisions for executing a voluntary relinquishment and consent to adopt.

- (2) A parent placing a child for adoption shall identify and provide information on the location of:
- (a) any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including any current spouse; and
 - (b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child.
- (3) A parent placing a child for adoption shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 18].
- (4) A parent placing a child for adoption shall provide:
- (a) the disclosures of medical and social history;
 - (b) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth; and
 - (c) a certified copy of any existing court orders pertaining to custody or visitation of the child."

Section 46. Section 42-4-209, MCA, is amended to read:

"42-4-209. Postplacement department or agency evaluation. (1) The department or agency shall complete a written postplacement evaluation. The postplacement evaluation must be conducted according to the department's or agency's standards for placement of a child and at a minimum must include a personal interview with the prospective adoptive parent in that person's home and observation of the relationship between the child and the prospective adoptive parent.

(2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department or agency shall file the postplacement evaluation.

(3) The evaluation must include the following information:

- (a) whether the child is legally free for adoption;
 - (b) whether the proposed home is suitable for the child;
 - (c) a statement that the medical and social histories of the birth parents and child have been provided to the prospective adoptive parent;
 - (d) an assessment of adaptation by the prospective adoptive parent to parenting the child;
 - (e) a statement that the 6-month postplacement evaluation period has been complied with or should be waived;
 - (f) any other circumstances and conditions that may have a bearing on the adoption and of which the court should have knowledge;
 - (g) whether the agency waives notice of the proceeding;
 - (h) a statement that any applicable provision of law governing an interstate or intercountry placement of the child has been complied with; and
 - (i) a statement of compliance with any applicable provisions of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 18].
- (4) The evaluation must contain a definite recommendation stating the reasons for or against the proposed adoption."

Section 47. Section 42-5-101, MCA, is amended to read:

"42-5-101. Petition for adoption. (1) A petition for adoption must be verified and must specify:

- (a) the full names, ages, and place and duration of residence of the petitioners;

- (b) the current marital status of petitioners and, if married, the place and date of the marriage;
 - (c) the circumstances under which the petitioners obtained physical custody of the child and the name of the individual or agency that placed the child;
 - (d) the date and place of birth of the child, if known;
 - (e) the name used for the child in the proceeding and, if a change in name is desired, the full name by which the child is to be known;
 - (f) that it is the desire of the petitioners that the relationship of parent and child be established between the petitioners and the child and to have all the rights and be subject to all the duties of that relationship;
 - (g) a full description and statement of value of all property owned or possessed by the child;
 - (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the adoption;
 - (i) that any applicable law governing interstate or intercountry placement was complied with;
 - (j) that, if applicable, the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., ~~was and~~ [sections 1 through 18] were complied with;
 - (k) whether a previous petition has been filed by the petitioners to adopt the child at issue or any other child in any court and the disposition of the petitions; and
 - (l) the name and address, if known, of any person who is entitled to receive notice of the petition for adoption.
- (2) There must be attached to or accompanying the petition:
- (a) any written consent required by 42-2-301;
 - (b) a certified copy of any court order terminating the rights of the child's parents;
 - (c) a certified copy of any existing court order in any pending proceeding concerning custody of or visitation with the child;
 - (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child with a special need;
 - (e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;
 - (f) a disclosure of any disbursements made in connection with the adoption proceeding.

- (3) One copy of the petition must be retained by the court. A copy must be sent to:
 - (a) the department or to the agency participating in the adoption proceeding;
 - (b) the parent placing the child for adoption in a direct parental placement adoption; or
 - (c) the child's guardian ad litem if the child has one.
- (4) Proceedings initiated under this part are subject to the Montana Rules of Civil Procedure except as modified by this part."

Section 48. Section 42-5-107, MCA, is amended to read:

"42-5-107. Best interests of child. (1) In determining whether to grant a petition to adopt, the court shall consider all relevant factors in determining the best interests of the child. The court shall consider factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability.

(2) In a contested adoption proceeding involving a child, the court shall consider the factors set out in subsection (1) and shall also consider:

- (a) the nature and length of any relationship already established between a child and any person seeking to adopt the child;
- (b) the nature of any family relationship between the child and any person seeking to adopt the child and whether that person has established a positive emotional relationship with the child;
- (c) the harm that could result to the child from a change in placement;
- (d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;
- (e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or the department or agency whose consent to the adoption is required.

(3) In an Indian child placement, the court shall determine if the requirements of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 18] have been met."

Section 49. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender

services in all courts in this state. The system is supervised by the director.

(2) The director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act and [section 9], as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as

provided in 53-24-302; and

- (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.
- (b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:
 - (i) as provided for in 41-3-425;
 - (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;
 - (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;
 - (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;
 - (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;
 - (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
 - (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;
 - (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and
- (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).
- (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.
- (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 50. Section 52-2-117, MCA, is amended to read:

"52-2-117. Indian child welfare specialist. (1) The director of the department shall appoint a qualified person to act as an Indian child welfare specialist.

(2) The duties of the specialist include:

- (a) developing Indian foster homes and other Indian placement resources;
- (b) providing technical advice to tribal, state, and county agencies and district courts on matters pertaining to Indian child welfare;
- (c) providing assistance in negotiating cooperative agreements to provide foster care services to Indian children;
- (d) conducting training seminars on implementing the federal Indian Child Welfare Act of 1978, {25 U.S.C. 1901, et seq.,} and [sections 1 through 18];
- (e) applying for and accepting grants and other funds for Indian child welfare activities;
- (f) developing and maintaining a list of attorneys to represent indigent parents and Indian custodians in Indian child welfare proceedings;
- (g) making recommendations to the department on legislation and rules concerning Indian child welfare matters; and
- (h) performing other duties concerning Indian child welfare matters as determined by the director."

Section 51. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

Section 52. Codification instruction. [Sections 1 through 18] are intended to be codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 1 through 18].

Section 53. Coordination instruction. If both House Bill No. 111 and [this act] are passed and approved and if both contain a section that amends 47-1-104, then the sections amending 47-1-104 are void and 47-1-104 must be amended as follows:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at

public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the director.

(2) The director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

~~(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425~~

~~(iv)~~(iii) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

~~(v)~~(iv) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

~~(vi)~~(v) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

~~(vii)~~(vi) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112; and

~~(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;~~

~~(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and~~

~~(vii)~~ for a witness in a criminal grand jury proceeding, as provided in 46-4-304;

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; ~~and~~

(ix) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant to 41-3-422 and as required under the federal Indian Child Welfare Act and [section 9], as provided in 41-3-425;

(x) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116; and

(xi) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 54. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2023.

(2) [Section 31] and this section are effective on passage and approval.

Section 55. Termination. [This act] terminates June 30, 2025.

- END -

I hereby certify that the within bill,
HB 317, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2023.

President of the Senate

Signed this _____ day
of _____, 2023.

HOUSE BILL NO. 317

INTRODUCED BY J. WINDY BOY, M. WEATHERWAX, C. KEOGH, D. HAWK, E. KERR-CARPENTER, A. BUCKLEY, K. SULLIVAN, K. KORTUM, T. FRANCE, E. STAFMAN, M. CAFERRO, M. THANE, F. SMITH, M. FOX, S. MORIGEAU, J. ETCHART, K. ABBOTT, P. TUSS, S. STEWART PEREGOY, B. CARTER, Z. ZEPHYR, M. ROMANO, L. SMITH, D. BAUM, E. MATTHEWS, S. HOWELL

AN ACT ESTABLISHING THE MONTANA INDIAN CHILD WELFARE ACT; PROVIDING REQUIREMENTS FOR DETERMINING INDIAN STATUS AND INDIAN TRIBE; ESTABLISHING REQUIREMENTS FOR COURT PROCEEDINGS, EVIDENCE, AND CONSENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 40-6-405, 40-6-407, 40-6-413, 40-6-414, 40-6-1001, 40-7-135, 41-3-102, 41-3-103, 41-3-109, 41-3-128, 41-3-205, 41-3-301, 41-3-306, 41-3-307, 41-3-422, 41-3-423, 41-3-425, 41-3-427, 41-3-432, 41-3-437, 41-3-444, 41-3-609, 42-2-102, 42-2-604, 42-4-102, 42-4-103, 42-4-203, 42-4-209, 42-5-101, 42-5-107, 47-1-104, AND 52-2-117, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

MINUTES
MONTANA HOUSE OF REPRESENTATIVES
68th LEGISLATURE - REGULAR SESSION
COMMITTEE ON (H) HUMAN SERVICES

Call to Order: Chair Jennifer Carlson-R, on February 01, 2023 at 3:46 PM, in 152

ROLL CALL

Members Present: Rep. Jennifer Carlson, Chair (R)
Rep. Alice Buckley, Vice Chair (D)
Rep. Kim Abbott (D)
Rep. Edward Buttrey (R)
Rep. Jodee Etchart (R)
Rep. Gregory Frazer (R)
Rep. Donavon Hawk (D)
Rep. Caleb Hinkle (R)
Rep. SJ Howell (D)
Rep. Ron Marshall (R)
Rep. Nelly Nicol (R)
Rep. George Nikolakakos (R)
Rep. Greg Oblander (R)
Rep. Amy Regier (R)
Rep. Wayne Rusk (R)
Rep. Laura Smith (D)
Rep. Ed Stafman (D)
Rep. Tom Welch (R)
Rep. Michael Yakawich (R)
Rep. Zooey Zephyr (D)

Members Excused: Rep. Lola Sheldon-Galloway (R)

Staff Present: Milly Allen, Research Analyst
Katie Reeves, Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

HB 317 01/27/2023

Executive Action:

15:48:14 Chair Carlson

HEARING ON HB 317 - Provide for the Montana Indian Child Welfare Act

Opening Statement:

15:50:06 Rep. Jonathan Windy Boy (D), HD 32, opened the hearing on HB 317, Provide for the Montana Indian Child Welfare Act.

Proponent Testimony:

15:52:26 Patrick Yawakie, Blackfeet Tribe

[EXHIBIT\(230201HUUHa1\)](#)

15:54:23 Lance Fourstar, Montana American Indian Caucus

[EXHIBIT\(230201HUUHa2\)](#)

15:55:55 Dawn Gray, Attorney, Blackfeet Tribe

15:59:47 Kelly Driscoll, Public Defender, Family Defense ICWA

[EXHIBIT\(230201HUUHa3\)](#)

16:03:20 Brooke Bara-Taylor, Chipewa Tribe

16:08:00 Sara Crawford, Assistant Attorney General , Little Shell Tribe

16:11:06 Sharon Kickingwoman, American Civil Liberties Union & Blackfeet Tribe

[EXHIBIT\(230201HUUHa4\)](#)

16:15:06 Keegan Medrano, ACLU Montana, Misquogee Creek Tribe

16:18:59 Sharon Stewart-Peregoy, Representative District 42

16:24:32 Fred Fisher

[EXHIBIT\(230201HUUHa5\)](#)

[EXHIBIT\(230201HUUHa6\)](#)

[EXHIBIT\(230201HUh7\)](#)

16:31:53 Alissa Kelly, American Civil Liberty Union

[EXHIBIT\(230201HUh8\)](#)

16:34:55 Jade Bahr, Montana Budget Policy Center, Northern Cheyenne Nation

[EXHIBIT\(230201HUh9\)](#)

16:36:15 Shawn Reagore, Montana Human Rights Network

16:37:48 Kelly Twoteeth, Chippewa Tribe

16:40:18 Robin Turner, Montana Coalition Against Domestic Violence

16:41:19 Leo Thompson

16:43:31 Yolanda Page, Confederated Salish & Kootenai Tribe

16:46:06 Georgette Boggio, Crow Tribe

16:48:55 Ta'jin Perez, Deputy Director, Western Native Voice

16:50:16 Lauren Wilson, Montana Chapter American Academy of Pediatrics

16:50:40 Mariah Welch

16:53:46 Cherilyn Devries, Montana Human Rights Network

16:56:12 Danny Tennenbaum, Flathead Reservation Public Defender

16:57:09 Loni Taylor, Chippewa Creek Tribe

16:58:39 Kate Morris, CASA

17:02:34 Kendra Potter

17:05:54 Cora Neumann, Native American Development Co.

17:08:12 Shelly Fyant, Resident Flathead Indian Reservation

17:11:28 Brooke Swaney

17:14:24 Izzy Milch, Forward Montana

17:15:14 Carrie Spotted Bear, Zero to Five Montana

17:18:43 Lillian Alvernaz, Indian Law Section

Opponent Testimony:

17:22:24 Bruce Spencer, State Bar Association Montana

Questions from Committee:

17:24:18 Rep. SJ Howell

17:26:37 Rep. Donavon Hawk

17:26:49 Rep. Jonathan Windy Boy-D

17:27:18 Rep. Zooey Zephyr

17:28:06 Brooke Barker-Taylor

17:39:50 Chair Jennifer Carlson

17:39:54 Rep. Zooey Zephyr

17:40:01 Chair Jennifer Carlson

17:40:33 Rep. Greg Oblander

17:41:27 Chair Jennifer Carlson

17:41:30 Rep. Greg Oblander

17:41:35 Chair Jennifer Carlson

17:42:06 Rep. Greg Oblander

17:43:23 Rep. Jonathan Windy Boy-D

17:43:57 Brooke Barker-Taylor

17:44:31 Vice Chair Lola Sheldon-Galloway joined the meeting.

17:45:31 Rep. Greg Oblander

17:45:58 Brooke Barker-Taylor

17:47:16 Rep. Greg Oblander

17:47:54 Rep. Jonathan Windy Boy-D

17:48:22 Kelly Driscoll

17:49:14	Rep. Greg Oblander
17:49:24	Rep. Jonathan Windy Boy-D
17:49:51	Rep. Michael Yakawich
17:52:11	Rep. Stewart-Peregoy
17:53:53	Rep. Michael Yakawich
17:54:16	Rep. Stewart-Peregoy
17:56:07	Rep. Laura Smith
17:56:54	Brooke Barker-Taylor
17:57:59	Chair Jennifer Carlson
17:58:50	Kelly Driscoll
17:59:40	Chair Jennifer Carlson
18:00:00	Kelly Driscoll
18:00:25	Chair Jennifer Carlson
18:00:59	Nikki Grossberg
18:01:13	Chair Jennifer Carlson
18:01:51	Nikki Grossberg

Informational Witness Testimony:

17:25:30	Nikki Grossberg, DPHHS
17:25:52	Eldena Bear Don't Walk, Office of Public Defender

Closing Statement:

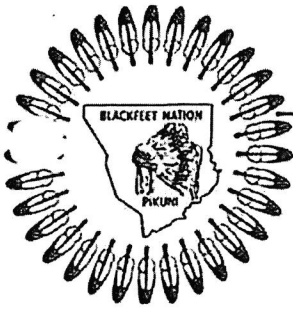
18:02:00	Rep. Jonathan Windy Boy (D), HD 32, closed the hearing on HB 317.
18:04:24	Chair Carlson

ADJOURNMENT

Adjournment: 18:05:04

Katie Reeves, Secretary

Additional Documents: [EXHIBIT\(230201HUhHaad\)](#)



BLACKFEET NATION

EXHIBIT 1
DATE 2/1/23
NS 317

P.O. BOX 850 BROWNING, MONTANA 59417
Telephone (406) 338-7521 Fax: (406) 338-7530

EXECUTIVE COMMITTEE

Iliff "Scott" Kipp, Sr. – Chairman
Lauren J. Monroe, Jr. – Vice-Chairman
Patrick D. Armstrong, Jr. – Secretary
Joseph A. Gervais – Treasurer

BLACKFEET TRIBAL BUSINESS COUNCIL

Patrick D. Armstrong, Jr.
Marvin Weatherwax, Jr.
Lauren J. Monroe, Jr.
Iliff "Scott" Kipp, Sr.
Everett Armstrong
Lyle Rutherford
Virgil Last Star
Timothy Davis
Shelly Hall

RESOLUTION

Letter of support for State ICWA legislation

No. 143-2023

WHEREAS, The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation, and

WHEREAS, The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests and resources of the Blackfeet Indian Reservation, and

WHEREAS, The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Nation pursuant to Section 16 of Act of June 18, 1934 and Amendments thereof, and

WHEREAS, The Blackfeet Tribal Business Council has been organized to represent, develop, protect, and advance the views, interests, and resources education and resources of the Blackfeet Indian Reservation, and

WHEREAS, the Montana Legislature wishes to enact a state version of the Indian Child Welfare Act (ICWA), which was enacted in 1978 to stop the widespread removal of Indian children from their families, homes, and tribal communities; and

WHEREAS, The Blackfeet Tribal Business Council believes it is in the best interest of Blackfeet children to be protected from harm and to prevent the unnecessary trauma that occurs when children are removed from their family, culture, and community; and

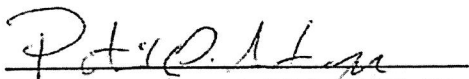
WHEREAS, The Blackfeet Tribal Business Council acknowledges that tribes and tribal communities, state governments, members of Congress, national and legal organizations, and thousands of Native American individuals have supported ICWA as an essential and effective policy that protects the best interests of Native American children; and

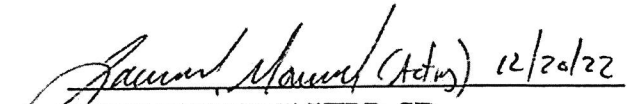
THEREFORE, BE IT RESOLVED:

1. The Blackfeet Tribal Business Council supports the legislation of the Montana Indian Child Welfare Act, in order to preserve for us and our descendants the inherent sovereign rights of our nations, to preserve cultural values, and to promote stable placements for Blackfeet children in loving, permanent homes, connected to their families and our culture.
2. that The Blackfeet Tribal Business Council is hereby delegated the authority and responsibility to sign all documents necessary to effect this

ATTEST:

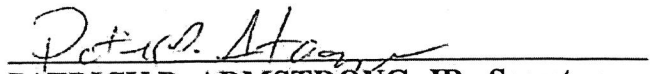
**THE BLACKFEET TRIBE OF THE
BLACKFEET INDIAN RESERVATION**


PATRICK D. ARMSTRONG, JR.
Secretary

 12/20/22
CLIFF "SCOTT" KIPP, SR.
Chairman

CERTIFICATION

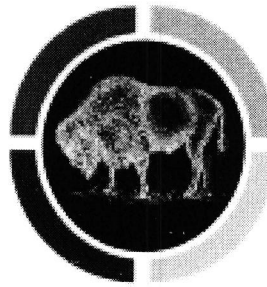
I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council in a duly called noticed and convened Special Session assembled for business the 20th day of December, 2022 with Seven (7) members present to constitute a quorum and by a vote of Seven (7) For, Zero (0) Opposed and Zero (0) Abstained.


PATRICK D. ARMSTRONG, JR., Secretary

(SEAL)

Blackfeet Tribal Business Council

EXHIBIT 2
DATE 2/1/23
HB 317



MONTANA
AMERICAN
INDIAN
CAUCUS

February 2nd, 2023

Dear Chairman Carlson,

The Montana American Indian Caucus writes in support of HB 317. Introduced by Representative Windy Boy, this bill would ensure that the State of Montana holds its commitment to protect the best interests of Indian children placed outside of their homes in accordance with the federal Indian Child Welfare Act. Regardless of ICWA, HB 317 ensures Montana steps up to what's in the best interest of Indian children.

As members of the Montana American Indian Caucus we urge the passage of HB 317, to provide for the Montana Indian Child Welfare Act.

Submitted by the Montana American Indian Caucus,

Senator Mike Fox (SD 16)	Rep. Tyson Running Wolf (HD 16)
Senator Shane Morigeau (SD 48)	Rep. Frank Smith (HD 31)
Senator Jason Small (SD 21)	Rep. Sharon Stewart Peregoy (HD 42)
Senator Susan Webber (SD8)	Rep. Marvin Weatherwax (HD 15)
Rep. Donavon Hawk (HD 76)	Rep. Jonathan Windy Boy (HD 32)

AFCARS Disproportionality Rates for Children of Color in Foster Care

Disproportionality Rates for Children of Color in Foster Care Dashboard (2010-2020)

The NCJFCJ published its first *Disproportionality Rates for Children of Color in Foster Care Technical Assistance Bulletin* (TAB) in 2011. Since that time, the report has gained national attention. This version of the TAB makes use of interactive displays; this change in format allowed the NCJFCJ to display the data in a more engaging manner and in a way we hope is more conducive to practical use.

Notes: The data presented here may differ from that previously published in the print report series. Typically, these differences are due to adjustments in calculation techniques or a change in the data; the AFCARS data system allows states to update prior data with each new reporting cycle submission. It is also important to note that, unlike the 2015 report, data from Puerto Rico are not included in this application. Thus, United States totals found here may differ from prior published reports. The data included here cover federal fiscal year 2010 through 2019 (the federal fiscal year is October 1 through September 30).

Data Displays

Each display presents a story related to youth in foster care and levels of disproportionality for children of color in foster care. You can interact with the data using filters above each display (e.g., to view data for a particular state, or to change data years)

- Trends in the foster care population
- Profile and Disproportionality Index
- Disproportionality Index by state
- Trends in Disproportionality Index

Check out the **definitions and data sources** page for information about that data and definitions of key

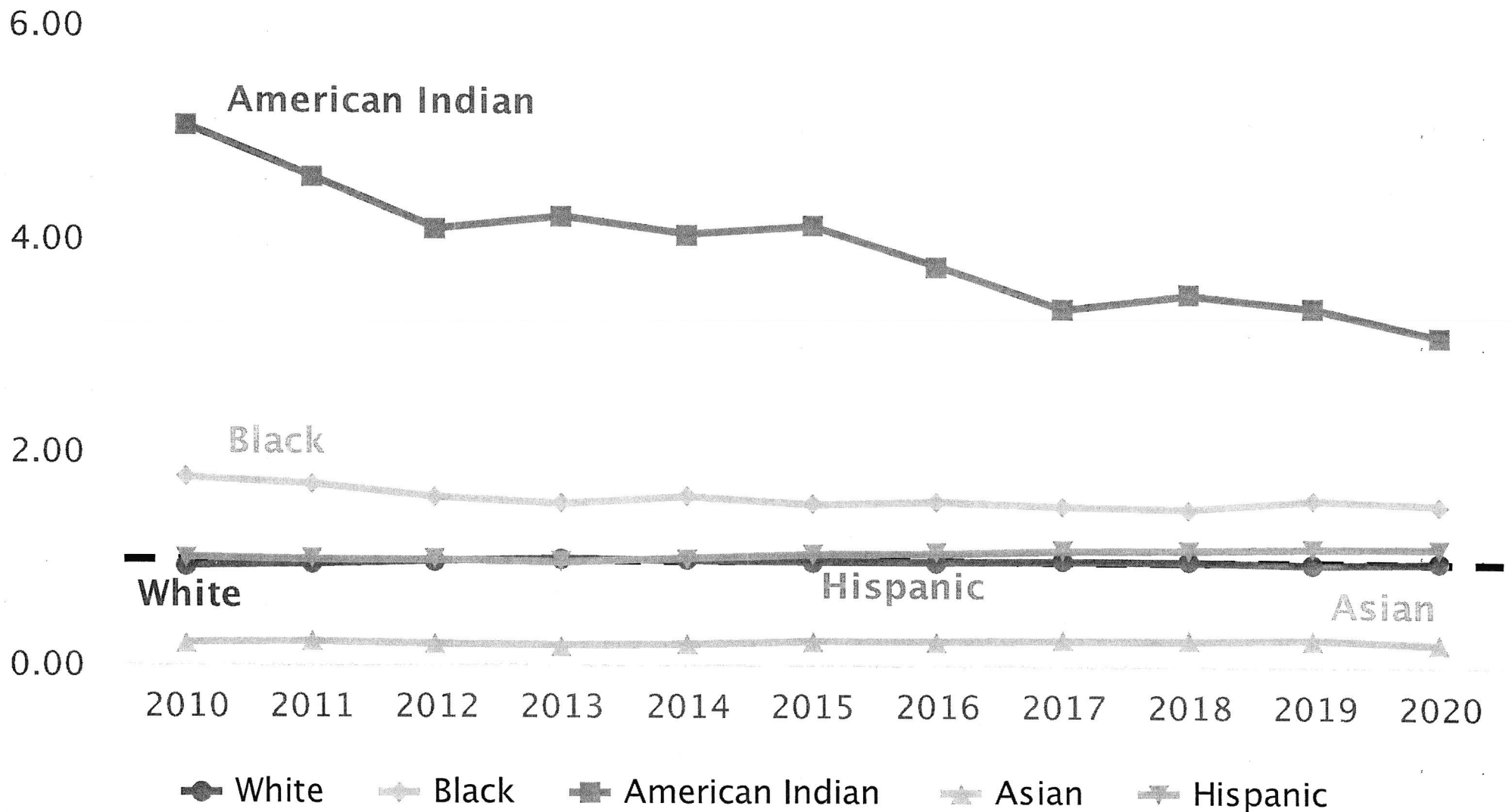
Updated on February 28, 2022

Suggested citation:

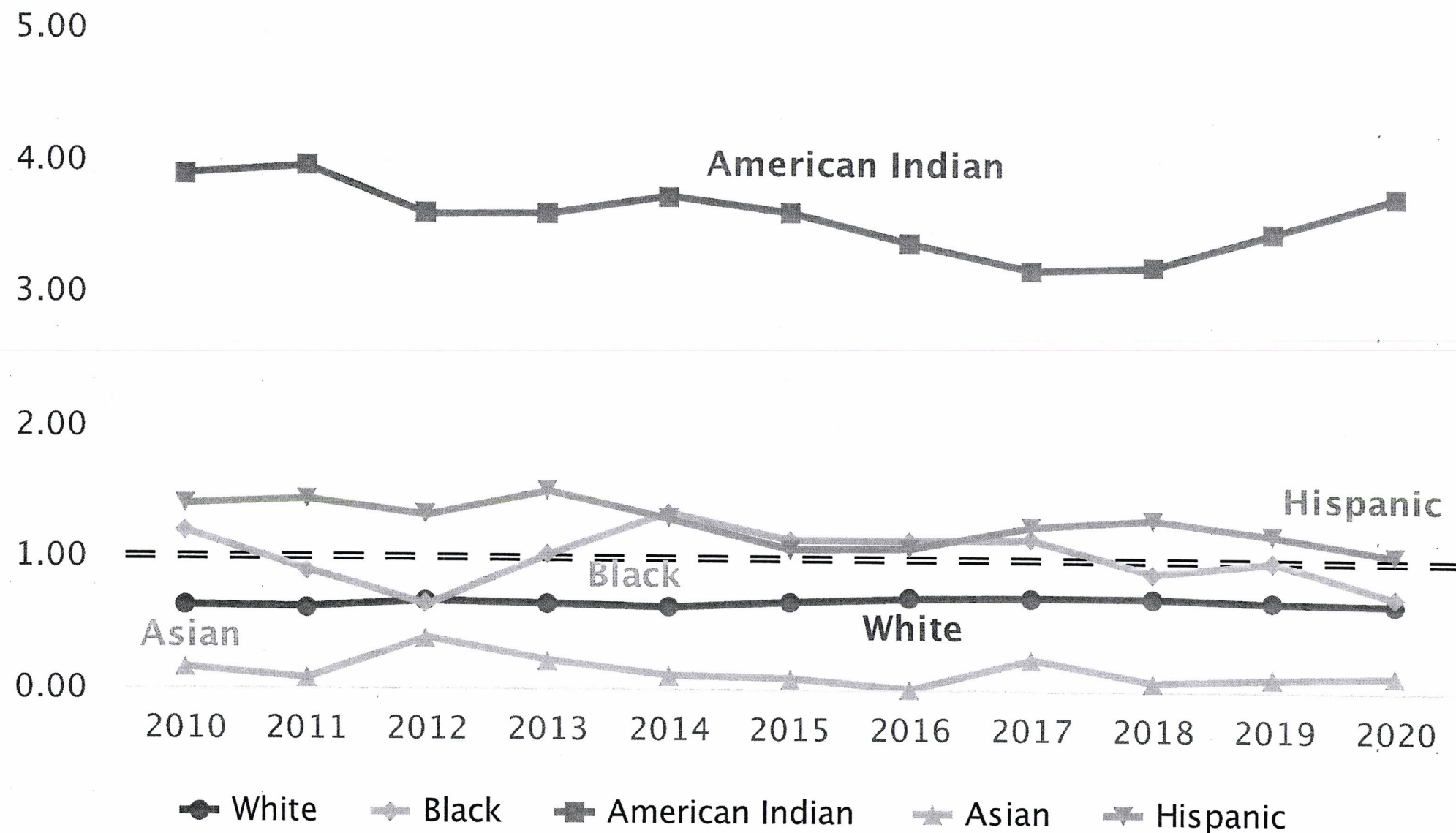
Puzzanchera, C., Taylor, M., Kang, W. and Smith, J. (2022). Disproportionality Rates for Children of Color in Foster Care Dashboard. National Council of Juvenile and Family Court Judges.

This dashboard is a product of the National Council of Juvenile and Family Court Judges Juvenile Law Program. The National Council of Juvenile and Family Court Judges wishes to acknowledge that Cooperative Agreement No. 2015-CT-FX-K001 and 2018-CT-FX-K001 from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice makes this material possible. Points of view or opinions are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice or the National Council of Juvenile and Family Courts Judges

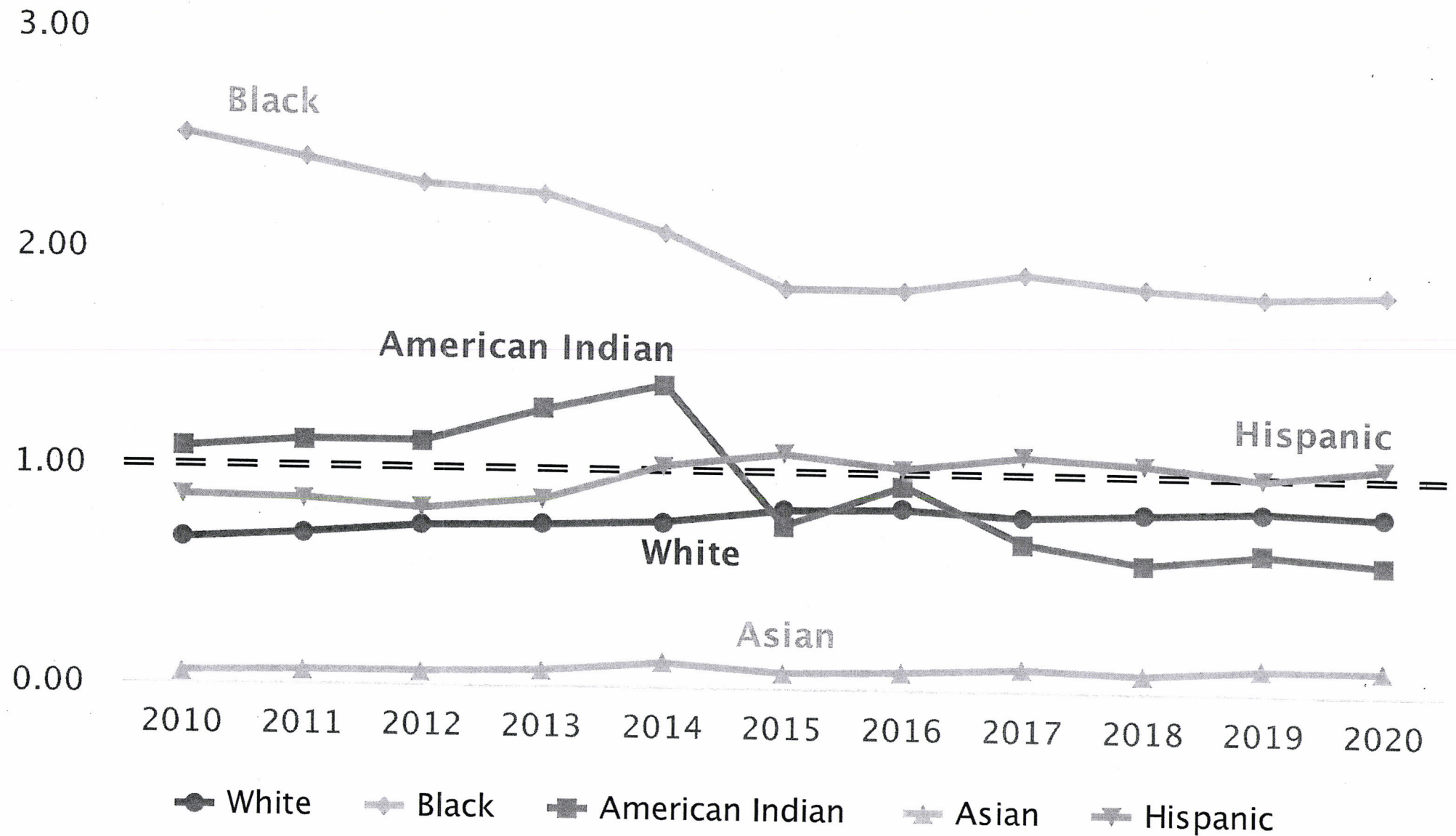
Disproportionality index for children in foster care by race/ethnicity:
Washington



Disproportionality index for children in foster care by race/ethnicity: Montana



Disproportionality index for children in foster care by race/ethnicity: Michigan





BLACKFEET NATION

AMOUNT 4
DATE 2/1/23
NB 317

P.O. BOX 850 BROWNING, MONTANA 59417
Telephone (406) 338-7521 Fax: (406) 338-7530

EXECUTIVE COMMITTEE

Hilt "Scott" Kipp, Sr. - Chairman
Lauren J. Monroe, Jr. - Vice-Chairman
Patrick D. Armstrong, Jr. - Secretary
Joseph A. Gervais - Treasurer

BLACKFEET TRIBAL BUSINESS COUNCIL

Patrick D. Armstrong, Jr.
Marvin Weatherwax, Jr.
Lauren J. Monroe, Jr.
Hilt "Scott" Kipp, Sr.
Everett Armstrong
Lyle Rutherford
Virgil Last Star
Timothy Davis
Shelly Hall

RESOLUTION

Letter of support for State ICWA legislation

No. 143-2023

- WHEREAS,** The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation, and
- WHEREAS,** The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests and resources of the Blackfeet Indian Reservation, and
- WHEREAS,** The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Nation pursuant to Section 16 of Act of June 18, 1934 and Amendments thereof, and
- WHEREAS,** The Blackfeet Tribal Business Council has been organized to represent, develop, protect, and advance the views, interests, and resources education and resources of the Blackfeet Indian Reservation, and
- WHEREAS,** the Montana Legislature wishes to enact a state version of the Indian Child Welfare Act (ICWA), which was enacted in 1978 to stop the widespread removal of Indian children from their families, homes, and tribal communities; and

WHEREAS, The Blackfeet Tribal Business Council believes it is in the best interest of Blackfeet children to be protected from harm and to prevent the unnecessary trauma that occurs when children are removed from their family, culture, and community; and

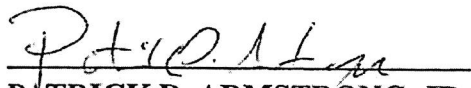
WHEREAS, The Blackfeet Tribal Business Council acknowledges that tribes and tribal communities, state governments, members of Congress, national and legal organizations, and thousands of Native American individuals have supported ICWA as an essential and effective policy that protects the best interests of Native American children; and

THEREFORE, BE IT RESOLVED:

1. The Blackfeet Tribal Business Council supports the legislation of the Montana Indian Child Welfare Act, in order to preserve for us and our descendants the inherent sovereign rights of our nations, to preserve cultural values, and to promote stable placements for Blackfeet children in loving, permanent homes, connected to their families and our culture.
2. that The Blackfeet Tribal Business Council is hereby delegated the authority and responsibility to sign all documents necessary to effect this

ATTEST:

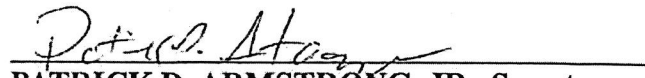
**THE BLACKFEET TRIBE OF THE
BLACKFEET INDIAN RESERVATION**


PATRICK D. ARMSTRONG, JR.
Secretary

 12/20/22
CLIFF "SCOTT" KIPP, SR.
Chairman

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council in a duly called noticed and convened Special Session assembled for business the 20th day of December, 2022 with Seven (7) members present to constitute a quorum and by a vote of Seven (7) For, Zero (0) Opposed and Zero (0) Abstained.


PATRICK D. ARMSTRONG, JR., Secretary

(SEAL)

Blackfeet Tribal Business Council

The Chippewa Cree Tribe of the Rocky Boy's Reservation

Phone: (406) 395-5705 - Finance Office
(406) 395-4282 or 4321 - Business Committee

96 Clinic Road
Box Elder, Montana 59521

No. 178-22

A RESOLUTION HEREBY SUPPORTS THE MONTANA INDIAN CHILD WELFARE ACT

WHEREAS, the Chippewa Cree Tribal Business Committee (CCTBC) is the governing body of the Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana, by authority of the Constitution and By-Laws of the Chippewa Cree Tribe approved on the 23rd day of November 1935, and

WHEREAS, pursuant to their inherent sovereignty and Constitution and By-Laws of the CCTBC is charged with the duty to promote and protect the health, security and general welfare of the Chippewa Cree Tribe, and

WHEREAS, the Montana Legislature wishes to enact a state version of the Indian Child Welfare Act (ICWA), which was enacted in 1978 to stop the widespread removal of Indian children from their families, homes, and tribal communities; and

WHEREAS, the Chippewa Cree Tribal Business Committee believes it is in the best interest of Chippewa Cree children to be protected from harm and to prevent the unnecessary trauma that occurs when children are removed from their family, culture, and community; and

WHEREAS, the Chippewa Cree Tribal Business Committee acknowledges that tribes and tribal communities, state governments, members of Congress, national and legal organizations, and thousands of Native American individuals have supported ICWA as an essential and effective policy that protects the best interests of Native American children; and

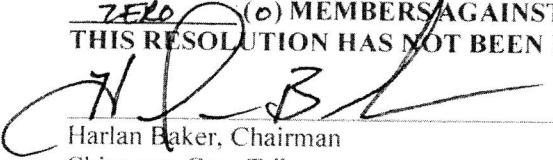
WHEREAS, the CCTBC affirms that all resolutions, or parts of the same, that are inconsistent with the provisions of this Resolution, are hereby repealed to the extent of such inconsistency, now

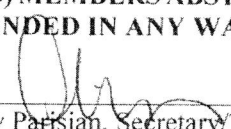
NOW, THEREFORE IT BE RESOLVED, the Chippewa Cree Tribal Business Committee supports the legislation of the Montana Indian Child Welfare Act, in order to preserve for us and our descendants the inherent sovereign rights of our nations, to preserve cultural values, and to promote stable placements for Chippewa Cree children in loving, permanent homes, connected to their families and our culture.

BE IT FINALLY RESOLVED, that the Chippewa Cree Tribal Business Committee is hereby delegated the authority and responsibility to sign all documents necessary to effect this action.

CERTIFICATION

I, THE UNDERSIGNED, AS SECRETARY/TREASURER OF THE BUSINESS COMMITTEE FOR THE CHIPPEWA CREE TRIBE, HEREBY CERTIFY THAT THE BUSINESS COMMITTEE IS COMPOSED OF NINE MEMBERS, OF WHOM EIGHT (8) MEMBERS CONSTITUTING A QUORUM WERE PRESENT AT A MEETING, DULY AND REGULARLY CALLED, NOTICED, CONVENED AND HELD ON THE 29th DAY OF DECEMBER 2022, AND THAT THE FOREGOING RESOLUTION WAS FULLY ADOPTED AT SUCH A MEETING BY THE VOTE OF SEVEN (7) MEMBERS FOR AND ZERO (0) MEMBERS AGAINST AND ZERO (0) MEMBERS ABSTAINED, AND THAT THIS RESOLUTION HAS NOT BEEN RESCINDED OR AMENDED IN ANY WAY.


Harlan Baker, Chairman
Chippewa Cree Tribe


Chassidy Parisian, Secretary/Treasurer
Chippewa Cree Tribe

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE INDIAN RESERVATION
LAME DEER, MONTANA**

RESOLUTION NO. DOI-070 (2023)

**A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL TO SUPPORT THE
LEGISLATION OF THE MONTANA INDIAN CHILD WELFARE ACT.**

WHEREAS; the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Indian Reservation by the authority of pursuant to the Amended Constitution and Bylaws of the Northern Cheyenne Tribe as approved by the Secretary of the Interior on May 31st, 1996; and

WHEREAS; the Northern Cheyenne Tribal Council is empowered under Article IV, Section 1, parts (m & q) to administer charity and to protect the general welfare of the Tribe, and to provide for the appointment of guardians for minors and incompetents by ordinance or resolution; and

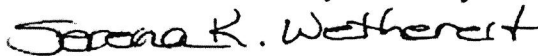
WHEREAS; the Montana Legislature wishes to enact a state version of the Indian Child Welfare Act (ICWA), which was enacted in 1978 to stop the widespread removal of Indian Children from their families, homes, and tribal communities; and

WHEREAS; the Northern Cheyenne Tribal Council believes it is in the best interest of the Northern Cheyenne children to be protected from harm and to prevent the unnecessary trauma that occurs when children are removed from their family, culture, and community; and

WHEREAS; the Tribal Council acknowledges that tribes and tribal communities, state governments, members of Congress, national and legal organizations, and thousands of native American individuals have supported ICWA as an essential and effective policy that protects the best interests of Native American children; now

THEREFORE, BE IT RESOLVED that the Northern Cheyenne Tribal Council supports the legislation of the Montana Indian Child Welfare Act, in order to preserve for us and our descendants the inherent sovereign rights of our nations, to preserve cultural values, and to promote stable placements for Northern Cheyenne children in loving, permanent homes, connected to their families and our culture.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 8 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions this 27th day of January 2023.



Serena Wetherelt, President
Northern Cheyenne Tribe

ATTEST:



Edina Redstar, Secretary
Northern Cheyenne Tribe

Noted:

ANDREW WERK

Superintendent

Digitally signed by ANDREW
WERK
Date: 2023.01.30 14:46:57
-07'00'

**RESOLUTION
OF THE GOVERNING BODY OF
THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, MONTANA**

BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES TO SUPPORT THE STATE INDIAN CHILD WELFARE ACT LEGISLATION.

WHEREAS, the Tribal Council is the duly elected body representing the Confederated Salish and Kootenai Tribes of the Flathead Reservation of Montana and is empowered to act on behalf of the Tribes. All actions shall be adherent to provisions set forth in the Constitution and By-Laws.

WHEREAS, the Montana Legislature wishes to enact a state version of the Indian Child Welfare Act (ICWA), which was enacted in 1978 to stop the widespread removal of Indian children from their families, homes, and tribal communities; and

WHEREAS, the Tribal Council believes it is in the best interest of the Confederated Salish and Kootenai Tribes' children to be protected from harm and to prevent the unnecessary trauma that occurs when children are removed from their family, culture, and community; and

WHEREAS, the Tribal Council acknowledges that tribes and tribal communities, state governments, members of Congress, national and legal organizations, and thousands of Native American individuals have supported ICWA as an essential and effective policy that protects the best interests of Native American children; and

NOW, THEREFORE IT BE RESOLVED, the Tribal Council supports the legislation of the Montana Indian Child Welfare Act, in order to preserve for us and our descendants the inherent sovereign rights of our nations, to preserve cultural values, and to promote stable placements for the Confederated Salish and Kootenai Tribes' children in loving, permanent homes, connected to their families and our culture.

BE IT FINALLY RESOLVED, that the Tribal Council is hereby delegated the authority and responsibility to sign all documents necessary to effect this action.

CERTIFICATION

The Tribal Council duly adopted the foregoing Resolution on January 3, 2023, by a vote of 9 for, 0 opposed, and 1 not voting, pursuant to authority vested in it by Article VI, Section 1 (l), (q), and (k) of the Tribes' Constitution and Bylaws, said Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.



Chairman, Tribal Council

ATTEST:



Tribal Secretary



Rocky Mountain Tribal Leaders Council

2929 3rd Avenue North, Suite 300, Billings, Montana 59101
Ph: (406) 252-2550 Fax: (406) 254-6355 Web: www.rmtlc.org

January 31, 2023

Jonathan Windy Boy
HD 32 Representative
Montana American Indian Caucus
PO Box 250
Box Elder, MT 59521

Re: Letter to support the Montana Indian Child Welfare Act and HB 317

Dear Representative Windy Boy,

Rocky Mountain Tribal Leaders Council (TLC) has been created for the express purpose of providing its member Tribes with a unified voice and collective organization to address issues of concern to the Tribes and Indian people. RMTLC's mission is to promote the sovereignty, self-determination, and treaty rights of our member Indian nations and tribes.

The Board of Directors of the TLC consists of duly elected Tribal Chairs, Presidents, and Council Members who are fully authorized to represent their respective Tribes. RMTLC represents 10 Indian Nations which includes: Blackfeet, Chippewa Cree of Rocky Boy, Confederated Salish and Kootenai, Crow Tribe, Eastern Shoshone, Fort Belknap, Fort Peck, Little Shell Tribe of Chippewa Indians of Montana, Northern Arapaho, and Shoshone Bannock tribes.

The Montana Legislature wishes to enact a state version of the Indian Child Welfare Act (ICWA), which was enacted in 1978 to stop the widespread removal of Indian children from their families, homes, and tribal communities. RMTLC believes it is in the best interest of the TLC's children to be protected from harm and to prevent the unnecessary trauma that occurs when children are removed from their family, culture, and community.

Rocky Mountain Tribal Leaders Council acknowledges that tribes and tribal communities, state governments, members of Congress, national and legal organizations, and thousands of Native American individuals have supported ICWA as an essential and effective policy that protects the best interests of Native American children.

TLC supports the legislation of the Montana Indian Child Welfare Act, in order to preserve for us and our descendants the inherent sovereign rights of our nations, to preserve cultural values, and to promote stable

placements for the TLC's children in loving, permanent homes, connected to their families and our culture. Therefore, Rocky Mountain Tribal Leaders Council supports the Montana Indian Child Welfare Act.

Respectfully,

A handwritten signature in cursive script, appearing to read "Gerald Gray".

Gerald Gray, Chairman
Rocky Mountain Tribal Leaders Council



Chairman
Gerald Gray Jr.

1st Vice Chairman
Clarence Sivertsen

2nd Vice Chairman
Leona Kienenberger

Secretary/Treasurer
Colleen Hill

Council Members
Donald Davis
Iris Killeagle

January 31, 2023

Representative Jonathan Windy Boy
Montana Legislature
PO Box 250
Box Elder, Mt 59521-0250

Re: Support of HB 317 – the Montana Indian Child Welfare Act

Dear Rep. Windy Boy,

On behalf of the Little Shell Tribe of Chippewa Indians ("Tribe"), I write this letter of support for the passage of HB 317, the Montana Indian Child Welfare Act ("MT ICWA").

Today, it remains more vital than ever that the Montana Legislature enact legislation regarding the out-of-home placements and adoptions of Native children. We continue to see Native children being removed from their homes at an alarmingly disproportionate rates. The MT ICWA provides additional protections that will ensure that these Native children have a continued connection to their families and their tribal culture and identity.

As you know, after 150 years of fighting for federal recognition, the Little Shell Tribe's recognition was recently restored. The Tribe is now focused on protecting and preserving our culture by teaching Little Shell children our ways of life and important values. The MT ICWA will uphold the inherent sovereign rights of the Little Shell Tribe, provide the ability for the Tribe to preserve our cultural values, and to allow the Tribe to promote stable placements of Little Shell children in loving, permanent homes, connected to their families and our culture.

For these reasons, the Little Shell Tribe of Chippewa Indians supports the passage of the HB 317, the Montana Indian Child Welfare Act.

Sincerely,

Gerald Gray
Chairman, Little Shell Tribe

EXECUTIVE DECLARATION

WHEREAS, the Crow Tribal Executive Branch has the power and duty under Article IV, Section 3(a) 2001 Crow Constitution to represent the Crow Tribe of Indians in matter so f welfare, education, recreation, social services and economic development affecting the Crow Tribe of Indians; and

WHEREAS, the Crow Tribe is empowered to, under the Crow Constitution to promote and protect the health, peace, morals, education, and general welfare of the Crow Nation, and its people; and

WHEREAS, the Montana Legislature wishes to enact a state version of the Indian Child Welfare Act (ICWA), which was enacted in 1978 to stop the widespread removal of Indian children from their families, homes, and tribal communities; and

WHEREAS, the Crow Tribal Executive Branch believes it is in the best interest of the Crow Tribes' children to be protected from harm and to prevent the unnecessary trauma that occurs when children are removed from their family, culture, and community; and

WHEREAS, the Crow Tribal Executive Branch acknowledges that tribes and tribal communities, state governments, members of Congress, national and legal organizations, and thousands of Native American individuals have supported ICWA as an essential and effective policy that protects the best interests of Native American children; and

NOW, THEREFORE IT BE DECLARED, the Crow Tribe, through the Crow Tribal Executive Branch supports the legislation of the Montana Indian Child Welfare Act, to preserve for the Crow Tribe and our descendants the inherent sovereign rights of our nations, to preserve cultural values, and to promote stable placements for Crow children in loving, permanent homes, connected to their families and our culture.

A handwritten signature in cursive script, reading "Frank Whiteclay".

Frank Whiteclay
Crow Tribal Chairman

FORT PECK TRIBES

Assiniboine & Sioux

December 22, 2022

State Senator Jonathan Windy Boy
Montana State Legislature
Room 370, State Capitol
P.O. Box 200400
Helena, MT 59620-0400
Jonathan.WindyBoy@legmt.gov

RE: Montana ICWA Legislation

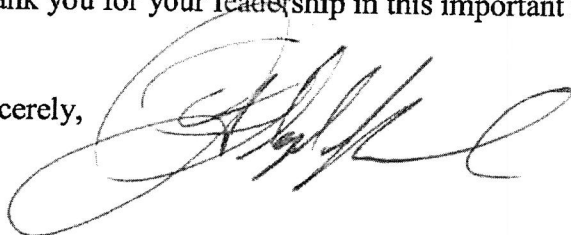
Dear State Senator Windy Boy:

On behalf of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, I am writing to share the Attached Resolution and to offer our support for the Montana Indian Child Welfare Act legislation you are sponsoring. It is important to the Assiniboine and Sioux Tribes that ICWA legal standards be recognized by the State of Montana—as they are important for protecting all of our Native children and preservation of our Native families. Similar legislation is successful with other States and Tribal Nations and we believe it can be similarly successful in Montana and with all our Tribal Nations as well.

Please let us know how we can offer our support in your ICWA Legislative efforts. You can reach me at fazure@fortpecktribes.net, our HHS Committee Chairperson, Stacey Summers at Stacey.Summers@fortpecktribes.net, and our HHS Committee Vice-Chairman Dana Buckles at DBuckles@fortpecktribes.net. The Assiniboine and Sioux Tribes are willing to provide testimony in support of this legislation, if needed.

Thank you for your leadership in this important matter!

Sincerely,



Floyd G. Azure, Chairman

Encls (1) - Resolution

Disproportionality in Child Welfare

Fact Sheet

A publication of the National Indian Child Welfare Association

ENRIT 5
DATE 2/1/23
NB 317

NICWA
National Indian Child Welfare Association

What is Disproportionality in Child Welfare?

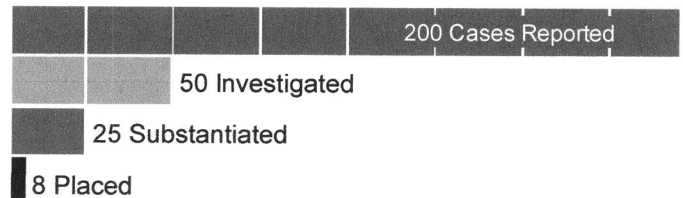
Research and data from states tell us that American Indian/Alaska Native (AI/AN) children are disproportionately represented, or overrepresented, in state foster care systems nationwide. This means that higher percentages of AI/AN children are found in the state foster care systems than in the U.S. population.

The overrepresentation of AI/AN children often starts with reports of abuse and neglect at rates proportionate to their population but grows higher at each major decision point in child welfare:

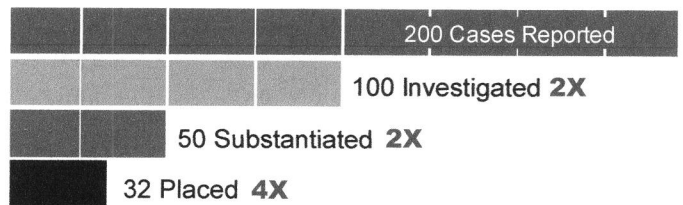
- 1) whether to order an investigation regarding abuse or neglect allegations,
- 2) whether to substantiate abuse or neglect allegations during or after an investigation, and
- 3) whether to remove a child from their home and place in foster care.

One national study found that, where abuse has been reported, AI/AN children are two times more likely to be investigated, two times more likely to have allegations of abuse or neglect substantiated, and four times more likely to be placed in foster care than Caucasian/White children (Hill, 2007).

White/Caucasian Children



American Indian/Alaska Native Children



American Indian/Alaska Natives Disproportionality in Child Welfare Nationally

Nationwide, AI/AN children are overrepresented in state foster care at a rate 2.66 times greater than their proportion in the general population.

"...although American Indian/Alaska Native children are just 1% of all children in the U.S., they are 2.7% of all children who are placed outside their homes in foster care..."

This means that although AI/AN children are just 1% of all children in the U.S., they are 2.7% of all children who are placed outside their homes in foster care (2019 data, which is the most recent available). By comparison, Caucasian/White children are underrepresented nationwide at a rate of 0.93 times lower than their proportion of the general population.

Caucasian/White children make up 53% of all children in the United States but only 51% of all children placed outside their homes in foster care (Puzzanchera & Taylor, 2021).

Calculating disproportionality statistics typically relies on a formula that compares the population rate of AI/AN children in a state, including AI/AN children both on and off tribal lands, to the rate of AI/AN children in that state foster care system.

While these published rates are helpful in understanding where and at what level foster care disproportionality exists, AI/AN children are often undercounted in state child welfare systems for different reasons, such as reporters of child maltreatment assuming a child is non-AI/AN based on their appearance or name, which results in underestimates of the actual number of AI/AN children who are in state foster care.

Additionally, the population of AI/AN children in some states include AI/AN children who would never appear in a state child welfare system because they are under tribal jurisdiction. This inflates the actual number of AI/AN children who could enter a state child welfare system.

By inflating the overall number of AI/AN children in a state that could be served by state child welfare agency and undercounting the number of AI/AN children who are currently in a state child welfare system, the disproportionality data can be assumed to be greater than the reported rate in many states.

"American Indian/Alaska Native children are often undercounted in state child welfare systems for different reasons, such as reporters assuming a child is non-AI/AN based on their appearance or name..."

Sources

¹ Hill, R. B. Casey-Center for the Study of Social Policy Alliance for Racial Equity in Child Welfare, Race Matters Consortium Westat. (2007). An analysis of racial/ethnic disproportionality and disparity at the national, state, and county levels. Seattle, WA: Casey Family Programs.

² National Center for Juvenile Justice (2019). Disproportionality Rates for Children of Color in Foster Care Dashboard. www.ncjj.org/AFCARS/Disproportionality_Dashboard.aspx

Disproportionate Foster Care of AI/AN Children: 15 States with the Highest Rates

Although national data highlights the overrepresentation of AI/AN children in state child welfare systems as a whole, a closer look at individual state foster care data in the table below illustrates how specific state policies and practices can impact the care and placement of AI/AN children and families in state child welfare systems (Puzzanchera & Taylor, 2021).

State	Disproportionality Rate (2019)	% of children who are AI/AN	% of children in foster care who are AI/AN
Minnesota	14.99	1.7%	25.8%
Wisconsin	5.87	1.3%	7.7%
North Dakota	5.16	8.5%	43.7%
South Dakota	4.52	13.7%	62.1%
Nebraska	4.16	1.3%	5.3%
Iowa	4.14	0.4%	1.8%
Montana	3.45	10.6%	36.7%
Washington	3.16	1.8%	5.6%
Hawaii	3.02	0.2%	0.6%
Oregon	2.98	1.6%	4.7%
Alaska	2.65	21.6%	57.3%
Utah	2.26	1.1%	2.4%
North Carolina	1.74	1.3%	2.3%
California	1.52	0.5%	0.8%
Maine	1.41	1.1%	1.5%

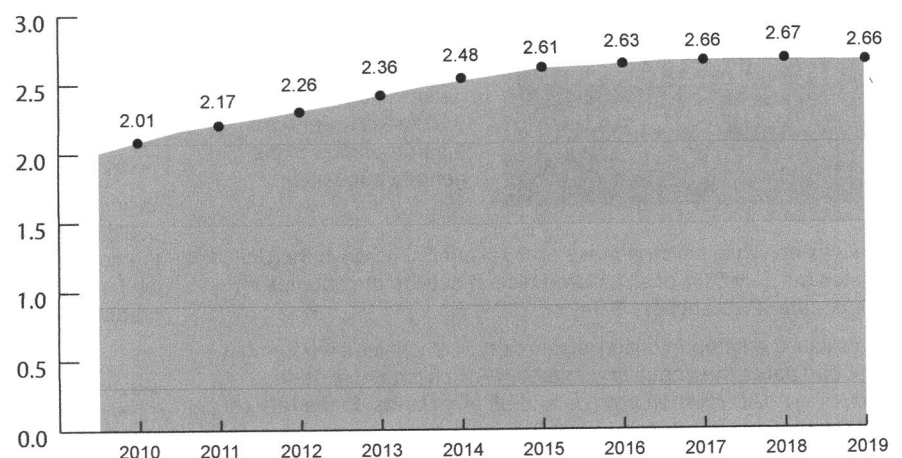


Trends in Disproportionate Foster Care Placement of AI/AN Children Over Time

While some states have reduced disproportionality of foster care placement of AI/AN children over time, others have not. As illustrated in the graph to the right, for AI/AN children, disproportionality increased dramatically from 2010 to 2014. It has since continued to increase, albeit at a slower rate, as shown to the right (Puzzanchera & Taylor, 2021).

By comparison, the disproportionality of other ethnic minority groups has decreased or held steady: for African Americans it has decreased (2.09 in 2010 vs. 1.67 in 2019); and has held steady for Asian Americans (range of 0.14 to 0.16 during years 2010–2019) and Hispanic Americans (range of 0.89 to 0.96 during years 2010–2019) (Puzzanchera & Taylor, 2021).

Disproportionality of American Indian/Alaska Native Youth in Foster Care in the U.S.



Disproportionality in Child Welfare | Fact Sheet | October 2021

A publication of the National Indian Child Welfare Association

An analysis of the most recent national data available (2019) demonstrates that the primary reasons AI/AN children come into the child welfare system are allegations of neglect (63%), reported alcohol use by parents (15%), or reported other substance use by parents (41%) (personal communication, Frank Edwards). The percentages add up to more than 100% because there may be multiple reasons that a child entered the child welfare system.

These reasons may also be interrelated, as allegations of neglect may be related to parental alcohol or substance abuse. There are also underlying structural inequities putting AI/AN children at higher risk of experiencing abuse or neglect (Drake et al., 2009; Putnam-Hornstein, 2013; Pelton, 2015).

PRIMARY REASONS AMERICAN INDIAN / ALASKA NATIVE CHILDREN COME INTO FOSTER CARE:

63% – Allegations of neglect

15% – Reported alcohol use by parents

41% – Reported other substance use by parents

Such factors include higher rates of poverty and unemployment for AI/ANs compared with Whites, a disparity that has been exacerbated by the COVID-19 pandemic according to recent U.S. Census data (Feir & Golding, 2020). AI/AN adults experience mental health and substance use challenges at higher rates than non-AI/ANs as well (Park-Lee et al., 2018), which may also contribute to the risk for child abuse and neglect. Historical trauma for AI/AN communities, including the forced removal of AI/AN children from their homes through federal assimilationist policies, is at the root of these other inequities (Brave Heart & DeBruyn, 1998).

ICWA's requirement to provide active efforts to rehabilitate families and placement preferences provide a pathway for keeping American Indian / Alaska Native children connected to their families, communities, and culture.

The Indian Child Welfare Act (25 U.S.C. 1901 et seq.) offers a way forward for addressing both systemic bias and historical trauma through recognizing tribal sovereignty and self-determination over child welfare. ICWA's requirement to provide active efforts to rehabilitate families and placement preferences provide a pathway for keeping AI/AN children connected to their families, communities, and culture. Improving state compliance with ICWA is an important strategy for addressing systemic bias against AI/AN families in the child welfare system, particularly in placement preferences required by ICWA for AI/AN children to be placed preferentially with AI/AN families before being placed in non-AI/AN homes. ICWA requires that "active efforts" be made to prevent child removal and support family reunification if at all possible by providing services and supports for families to help keep children safely at home.

The active efforts requirement is intended to counteract potential bias that may lead to unnecessary child removal and ultimately result in termination of parental rights. The Indian child's parents and tribe may also petition to have state child welfare proceedings transferred to tribal court. Therefore, adherence to ICWA requirements and placement preferences offers a critical mechanism for preventing systemic bias from impacting child welfare system decisions.

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NICWA
National Indian Child Welfare Association

The National Indian Child Welfare Association (NICWA) works to support the safety, health, and spiritual strength of Native children along the broad continuum of their lives. We promote building tribal capacity to prevent child abuse and neglect through positive systems change at the state, federal, and tribal levels.

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Confronting Inequities to Ameliorate Disproportionality

With clear disproportionalities both at the national and state levels for AI/AN involvement in the child welfare system, we must ask, ***what is behind these disproportionalities?***

What could be causing them, and how do we address the possible underlying causes?

Implicit bias is defined as having beliefs or attitudes that are unconscious regarding characteristics of different groups of people

One possible explanation is that there is ***systemic bias in the child welfare system***. Another possible explanation is that there could be ***underlying factors differentially impacting AI/AN communities which put children at higher risk*** of experiencing child abuse or neglect and thus higher rates of foster care placement. Below, we examine each of these possible explanations, evidence for those explanations, and the possible implications for reducing disproportionality for AI/AN families in the child welfare system.

Systemic bias refers to a differential response to AI/AN families on the part of the child welfare system compared to non-AI/AN families. In other words, child welfare workers may hold unconscious or implicit biases against AI/AN families, and therefore be more likely to substantiate reports of child welfare and also more likely to recommend removal of children from AI/AN homes.

Implicit bias is defined as having beliefs or attitudes that are unconscious (i.e., out of an individual's control) regarding characteristics of different groups of people (Project Implicit, 2011). Such implicit biases could result in reporters and child welfare workers treating AI/AN families differently than non-AI/AN families during the process of addressing potential reports of child abuse and neglect. The evidence that points to systemic bias against AI/AN families is that ***disproportionality rates increase at different points in the child welfare process***.

A national study by Robert Hill (2007) analyzed the data from the National Child Abuse and Neglect Data System (NCANDS) and Adoption and Foster Care Analysis and Reporting System (AFCARS) databases. Three stages of involvement with child welfare were examined: investigation of families, substantiation of reports of child abuse or neglect, and placement of children into foster care. The report found that AI/AN families were disproportionately represented at all three stages. Strikingly, the degree of overrepresentation of AI/AN families rises as families move through the three stages of investigation, substantiation, and placement. As Hill (2007, p. 10) writes,

In sum, at the national level, Blacks and AIs are twice as likely to be investigated or substantiated than they are in the general child population, but they are two or three times more likely to be placed in foster care than they are in the general child population. On the other hand, Whites and APIs are less likely to be investigated, substantiated, or placed in foster care than they are in the national child population. Regarding disparity ratios, Blacks and AIs are twice as likely as Whites to be investigated or substantiated, but three or four times more likely than White children to be placed in foster care.

In interpreting these data, Hill observes, "At the national level, the disproportionality rates among Black children and AI children rise as the child goes deeper into the child welfare system—from investigation through substantiation to foster care placement" (Hill, 2007, p. 49). This growing disproportionality through the three phases of child welfare system involvement suggests that there is systemic bias affecting key child welfare decisions. If that were not the case, we would expect the disproportionality rate to remain the same across all three decision points (investigation, substantiation, and removal).

"At the national level, the disproportionality rates among Black children and AI children rise as the child goes deeper into the child welfare system—from investigation through substantiation to foster care placement."

(Hill, 2007)

In addition to systemic bias, other factors that may contribute to AI/AN children and other children of color being overrepresented in the child welfare system are overt (rather than implicit) racial/cultural biases held by child welfare workers, lack of training in doing cross-cultural work, and policy-related barriers.

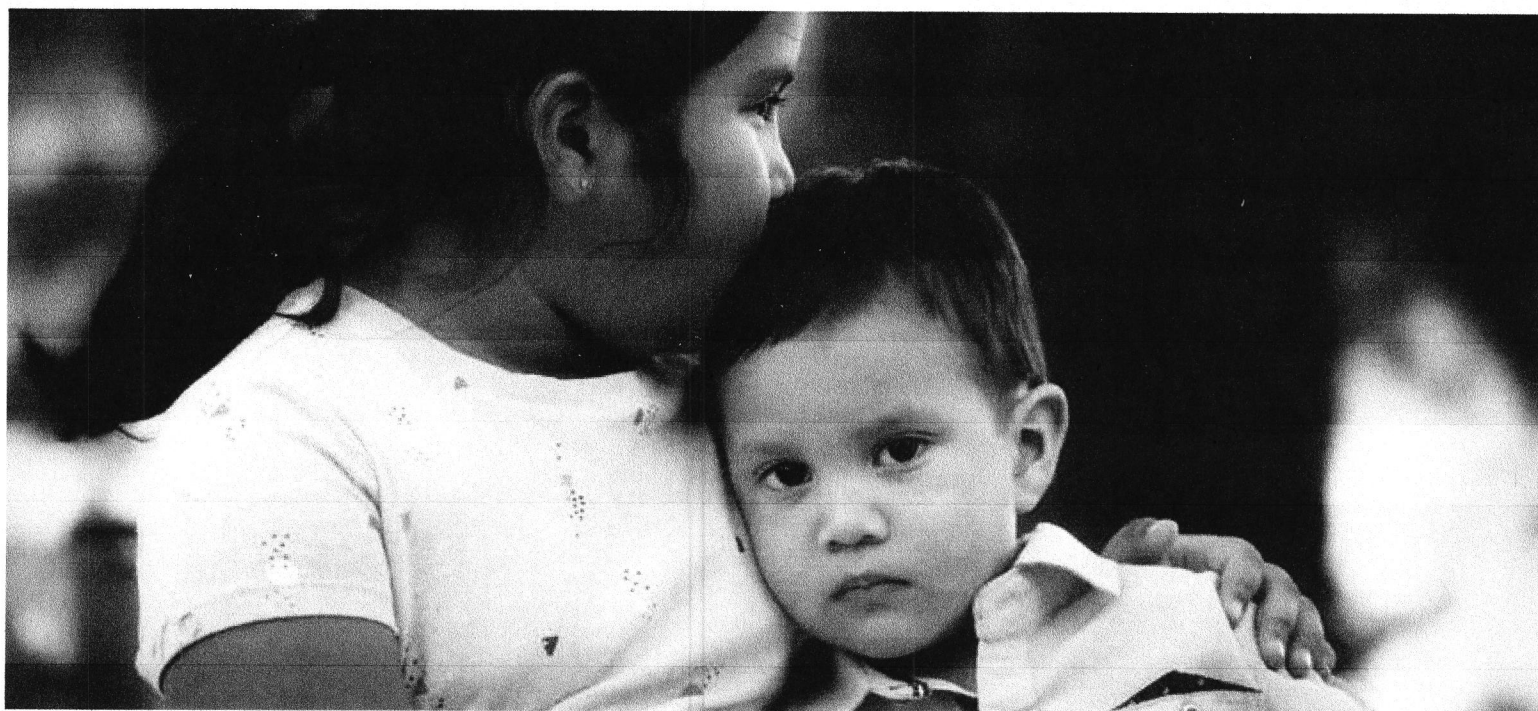
While some scholars assert that there are truly higher rates of child abuse and neglect in Black and AI/AN communities, and that is why those communities are overrepresented in the child welfare system (Drake et al., 2009), this explanation is likely incomplete. The National Incidence Studies of Child Abuse and Neglect-4 (the most recent wave of this long-standing study) concluded that both "how reporters to CPS respond to the maltreated children they encounter" (i.e., unconscious or systemic bias) and "the incidence of child abuse and neglect itself" are both likely reasons for disproportionality (Sedlak et al., 2010).

The report states that "the current information suggests that both of these dynamics contributed" to disproportionality (Sedlak et al., 2010).

EXHIBIT 4
DATE 2/1/23
HB 317

Michigan Indian Family Preservation Act at Seven Years

By Norika L. Kida Betti and Cameron Ann Fraser



In January 2013, Michigan enacted the Michigan Indian Family Preservation Act (MIFPA),¹ a state version of the Indian Child Welfare Act (ICWA).² Passed in 1978, ICWA is a remedial statute designed to protect native families and ensure that native children remain connected to their communities through heightened protections and burdens of proof in child welfare proceedings. ICWA came in response to overwhelming evidence that states were removing an alarmingly high percentage of Indian children from their families and tribal communities for placement with non-Indian families and institutions.³ MIFPA's goals were to incorporate the heightened federal standards into Michigan law, integrate federal requirements with state procedures and law, and provide state law

guidance on some of the ambiguous or missing provisions of the federal act.⁴ Since MIFPA's enactment, the federal government has twice updated its nonbinding guidelines and has enacted binding federal regulations.⁵ These newer federal authorities provide guidance for interpreting ICWA, but they are not binding as to MIFPA.⁶

In the seven years since MIFPA was enacted, Michigan appellate courts have issued 11 relevant published opinions: three cover orders removing children from the care of their parents,⁷ five cover orders that terminated parental rights,⁸ and four cover post-termination issues.⁹ The courts have not had to regularly dive into distinctions between state and federal laws because the protections offered have been in

At a Glance:

When differences arise between the Michigan Indian Family Preservation Act, the Indian Child Welfare Act, and regulations, the provision that is most protective of parents' rights should apply.

When inconsistencies arise involving provisions that do not concern the rights of parents, the courts should continue to follow the Michigan Indian Family Preservation Act's stricter provisions.

harmony. However, although state and federal authorities were created with the goal of protecting native families and communities, differences between them have led Michigan courts on occasion to grapple with which law controls.

When differences arise between state and federal authorities, the provision that is most protective of parents' rights should apply. ICWA provides:

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.¹⁰

Therefore, when the federal authority is more protective of parental rights, that authority should apply. For example, ICWA provides consideration of parental preference for placement: "Where appropriate, the preference of the Indian child or parent shall be considered: Provided, that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences."¹¹ MIFPA provides no similar provision. However, because this subsection of ICWA is protective of parental rights, it continues to apply despite its absence from MIFPA.

Michigan courts have consistently decided cases concerning parents' rights based on the higher standards afforded under MIFPA. The Michigan Supreme Court addressed one area where MIFPA standards exceed those under ICWA, explaining:

ICWA sets a floor, establishing the minimum national standards that must be met before an Indian child may be removed from his or her family in the context of child protective proceedings. 25 USC 1902. MIFPA similarly provides special protections when an Indian child is involved in certain proceedings in Michigan courts. Sometimes the protections afforded under MIFPA are greater than those provided under ICWA, as with the issue we consider today: when may the parent of an Indian child withdraw consent to the termination of parental rights.¹²

The Court further explained that under MIFPA a parent has the right to withdraw consent to termination of parental rights for purposes of adoption at any time before entry of a final order of adoption while under ICWA,¹³ and the parent's right to withdraw consent ends upon "entry of a final decree of termination or adoption, as the case may be...."¹⁴ This statutory protection for parents can be found in MIFPA, but is not provided for in ICWA as the Michigan Court of Appeals had previously determined in *In re Kiogima*.¹⁵

When presented with differing standards under ICWA and MIFPA in situations not involving parents' rights, such as post-termination requests to transfer a case to tribal court, the Michigan Court of Appeals has also relied on the stricter provisions of MIFPA. In *In re Spears*, the Court's decision turned on the less flexible standards of MIFPA rather than the more flexible ICWA and federal regulations when resolving a question of what constitutes good cause to deny transfer to a tribal court. The Court noted that "[u]nlike the ICWA, the MIFPA provides circuit courts with a clear and unambiguous standard for determining what constitutes 'good cause to the contrary' when considering a petition to transfer an Indian child custody case to a tribal court."¹⁶ In addition, *Spears* provided an opportunity for the Court to analyze a situation where the Bureau of Indian Affairs (BIA) guidelines and MIFPA were not in harmony. Applying MIFPA over the 1979 BIA guidelines that were in effect at the time of the case, the Court noted:

Although the BIA guidelines provide separately that good cause not to transfer a case to a tribal court may exist if a request to transfer is made "at an advanced stage...and the petitioner did not file the petition promptly after receiving notice of the hearing," BIA Guidelines at 67591, § C.3(b)(i),

Passed in 1978, ICWA is a remedial statute designed to protect native families and ensure that native children remain connected to their communities through heightened protections and burdens of proof in child welfare proceedings.



the Michigan Legislature chose not to include timeliness of the request for transfer as a basis for finding good cause under MCL 712B.7(5).¹⁷

In *In re KMN*, the Michigan Court of Appeals similarly rejected an argument that ICWA preempted MIFPA in a case concerning placement preferences, finding MIFPA's placement preferences "did not stand as an obstacle" to ICWA's stated purpose and instead "endeavored to further protect the Indian child's Indian culture—a purpose consistent with ICWA."¹⁸ Although the Court found no ICWA violations, it vacated several of the trial court's orders based on the stringent standards for deviating from the placement preferences under MIFPA.¹⁹

One author has encouraged states to adopt the BIA guidelines and ICWA regulations as state laws to ensure consistent compliance with the minimum federal standards and defend against court challenges.²⁰ Although this suggestion might be useful in other states, Michigan has already enacted MIFPA, and Michigan courts have consistently decided cases based on the heightened protections. Therefore, adopting the current federal regulations without a detailed analysis of the distinctions between the state and federal legal authorities would not be the better course of action. Instead, when inconsistencies arise, Michigan courts should continue to comply with the authority that is more protective of parental rights and, when parental rights are not at stake, follow MIFPA's stricter provisions. ■

Norika L. Kida Betti is a staff attorney with Michigan Indian Legal Services. She received her JD from Vermont Law School in 2013 and her BA from Kalamazoo College in 2007.

Cameron Ann Fraser is the executive director of Michigan Indian Legal Services. She received her JD from the University of Michigan Law School in 2000 and her BS from the University of Iowa in 1997.

ENDNOTES

1. MCL 712b.1 *et seq.*
2. 25 USC 1901 *et seq.*
3. 25 USC 1901.
4. Fort, *Waves of Education: Tribal-State Court Cooperation and the Indian Child Welfare Act*, 47 Tulsa L Rev 529, 540–543 (2012), available at <<https://digitalcommons.law.utulsa.edu/cgi/viewcontent.cgi?article=2827&context=tlr>> [<https://perma.cc/UH65-KV25>] [site accessed September 25, 2019].
5. Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed Reg 10,146 (February 25, 2015) and Guidelines for Implementing the Indian Child Welfare Act, 81 Fed Reg 96,476 (December 30, 2016) (codified at 25 CFR 23).
6. *In re Spears*, 309 Mich App 658, 673; 872 NW2d 852 (2015).
7. *In re Detmer/Beaudry*, 321 Mich App 49; 910 NW2d 318 (2017), *In re England*, 314 Mich App 245; 887 NW2d 10 (2016), and *In re McCarrick/Lamoreaux*, 307 Mich App 436; 861 NW2d 303 (2014).
8. *In re Beers*, 325 Mich App 653; 926 NW2d 832 (2018), *In re England*, 314 Mich App 245; 887 NW2d 10 (2016), *In re Johnson*, 305 Mich App 328; 852 NW2d 224 (2014), *In re Jones*, 316 Mich App 110; 894 NW2d 54 (2016), and *In re Payne/Pumphrey/Fortson*, 311 Mich App 49; 874 NW2d 205 (2015).
9. *In re JJW*, 320 Mich App 88; 902 NW2d 901 (2017), *In re KMN*, 309 Mich App 274; 870 NW2d 75 (2015), *In re Spears*, 309 Mich App 658; 872 NW2d 852 (2015), and *In re Williams*, 501 Mich 289; 915 NW2d 328 (2018).
10. 25 USC 1921. See also 25 CFR 23.106 and Guidelines for Implementing the Indian Child Welfare Act.
11. 25 USC 1915(c).
12. *Williams*, 501 Mich at 294.
13. MCL 712B.13(3) and 25 USC 1913(c).
14. *Williams*, 501 Mich at 298–299.
15. *In re Kiogima*, 189 Mich App 6; 472 NW2d 13 (1991).
16. *Spears*, 309 Mich App at 669.
17. *Id.* at 673.
18. *KMN*, 309 Mich App at 293.
19. *Id.* at 295.
20. Turner, *Implementing and Defending the Indian Child Welfare Act Through Revised State Requirements*, 49 Colum J L & Soc Probs 501, 501 (2016), available at <<http://jlsplaw.columbia.edu/wp-content/uploads/sites/8/2017/03/49-Turner.pdf>> [<https://perma.cc/9Y3E-PU5S>] [site accessed September 25, 2019].

Native American/Alaska Native Children | Overview

CRIMINAL 1
 DATE 2/1/23
 MS 317

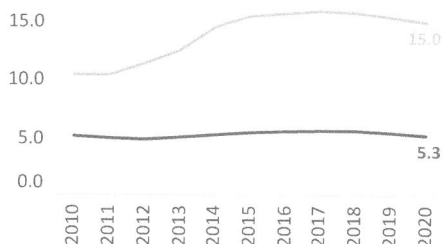
The data provided is derived from Tableau analysis by staff at Casey Family Programs using the 2020 Adoption and Foster Care Analysis and Reporting System (AFCARS) data made available by the National Data Archive on Child Abuse and Neglect Data (NDACAN) at Cornell University.

American Indian/Alaska Native
 All other children

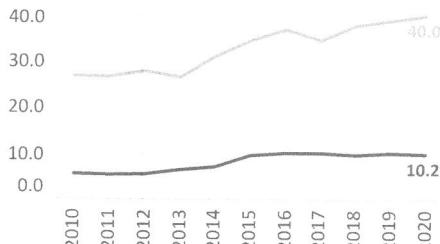
Rate of children in care per 1,000 children in population?

(In this section, American Indian/Alaska Native children are those who are identified as American Indian/Alaska Native alone and not in combination with another race/ethnicity. Axis ranges vary across graphs)

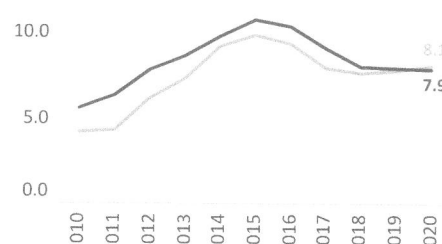
National (per 1,000)



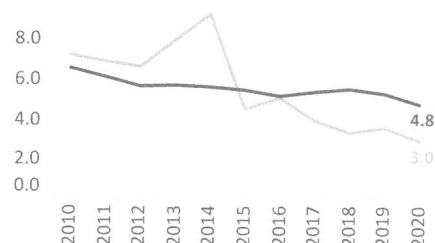
Alaska (per 1,000)



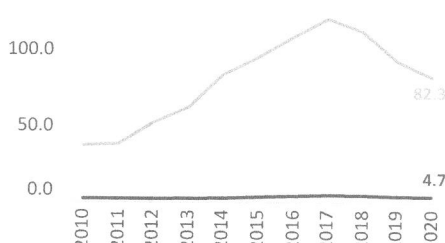
Arizona (per 1,000)



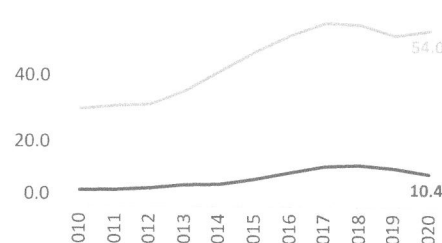
Michigan (per 1,000)



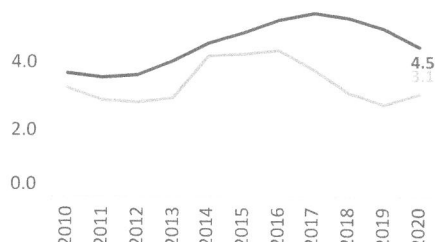
Minnesota (per 1,000)



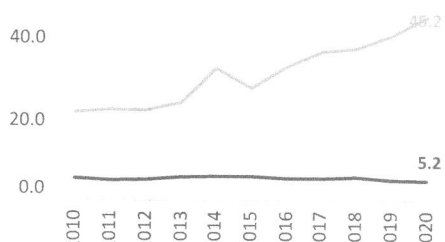
Montana (per 1,000)



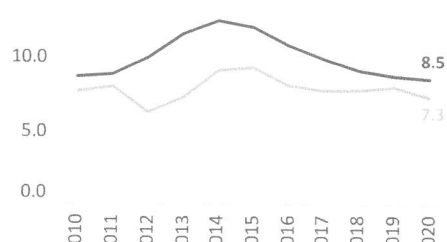
New Mexico (per 1,000)



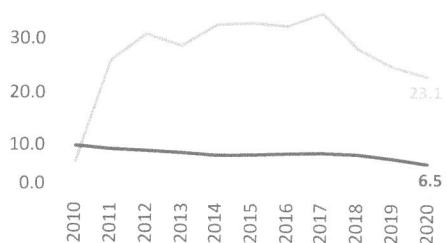
North Dakota (per 1,000)



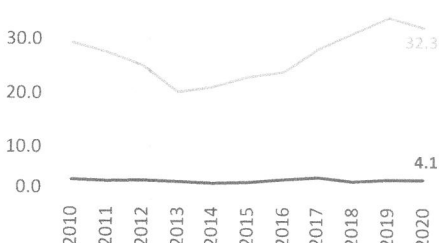
Oklahoma (per 1,000)



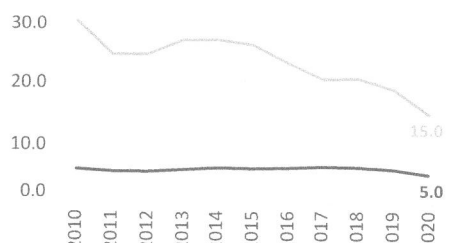
Oregon (per 1,000)



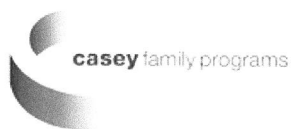
South Dakota (per 1,000)



Washington (per 1,000)



It is difficult to provide a complete picture of outcomes in ICWA cases because existing federal data may be incomplete and over- or under-inclusive. The data capture only whether a state identified a child as being American Indian or Alaska Native, not whether a child's case was governed by ICWA.



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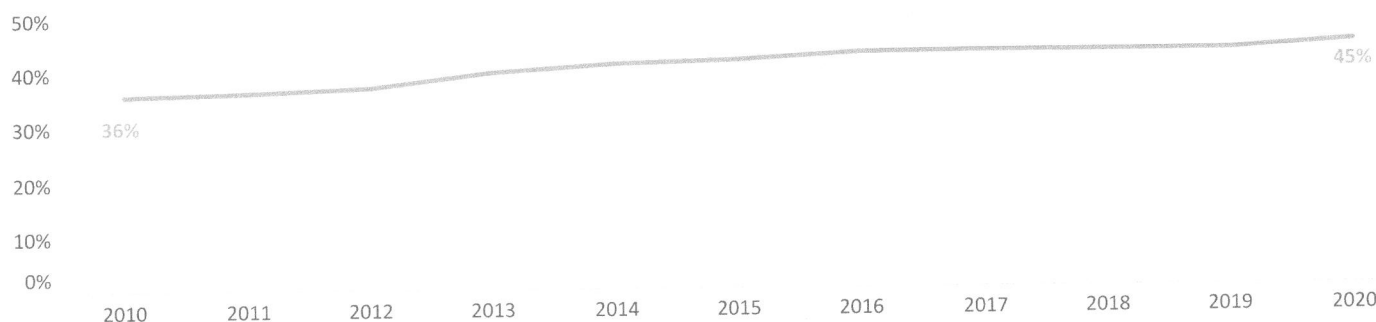
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Native American/Alaska Native Children | Overview

The data provided is derived from Tableau analysis by staff at Casey Family Programs using the 2020 Adoption and Foster Care Analysis and Reporting System (AFCARS) data made available by the National Data Archive on Child Abuse and Neglect Data (NDACAN) at Cornell University.

Of American Indian/Alaska Native children in care, what percent are placed in non-relative foster care with at least one caregiver of the same race OR placed with kin?

(In this section, American Indian/Alaska Native children are those who are identified as American Indian/Alaska Native either alone or in combination with another race/ethnicity.)

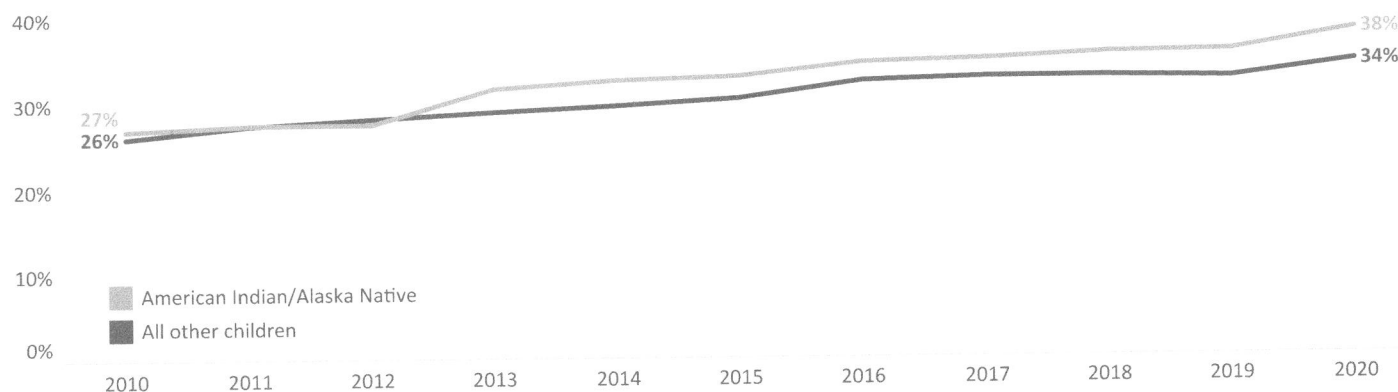


Data Table

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
36%	37%	37%	40%	42%	42%	43%	44%	43%	43%	45%

Of children in care, what percent are placed in kinship care?

(In this section, American Indian/Alaska Native children are those who are identified as American Indian/Alaska Native alone and not in combination with another race/ethnicity.)



Data Table

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
American Indian/Alaska Native	27%	28%	28%	32%	33%	33%	35%	35%	36%	36%	38%
All other children	26%	28%	28%	29%	30%	31%	32%	33%	33%	33%	34%

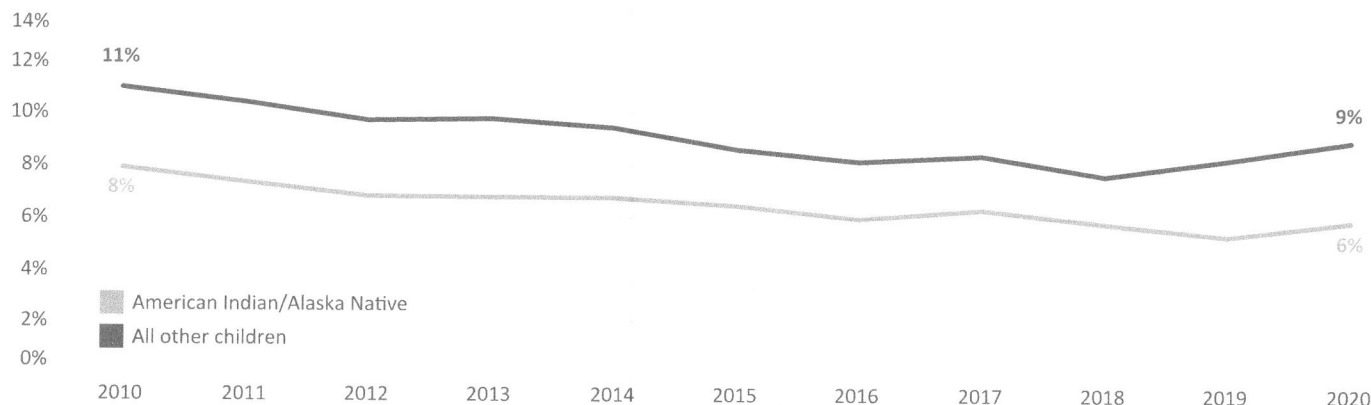
It is difficult to provide a complete picture of outcomes in ICWA cases because existing federal data may be incomplete and over- or under-inclusive. The data capture only whether a state identified a child as being American Indian or Alaska Native, not whether a child's case was governed by ICWA.

Native American/Alaska Native Children | Overview

The data provided is derived from Tableau analysis by staff at Casey Family Programs using the 2020 Adoption and Foster Care Analysis and Reporting System (AFCARS) data made available by the National Data Archive on Child Abuse and Neglect Data (NDACAN) at Cornell University.

Of children in care, what percent aged out of care?

(In this section, American Indian/Alaska Native children are those who are identified as American Indian/Alaska Native alone and not in combination with another race/ethnicity.)

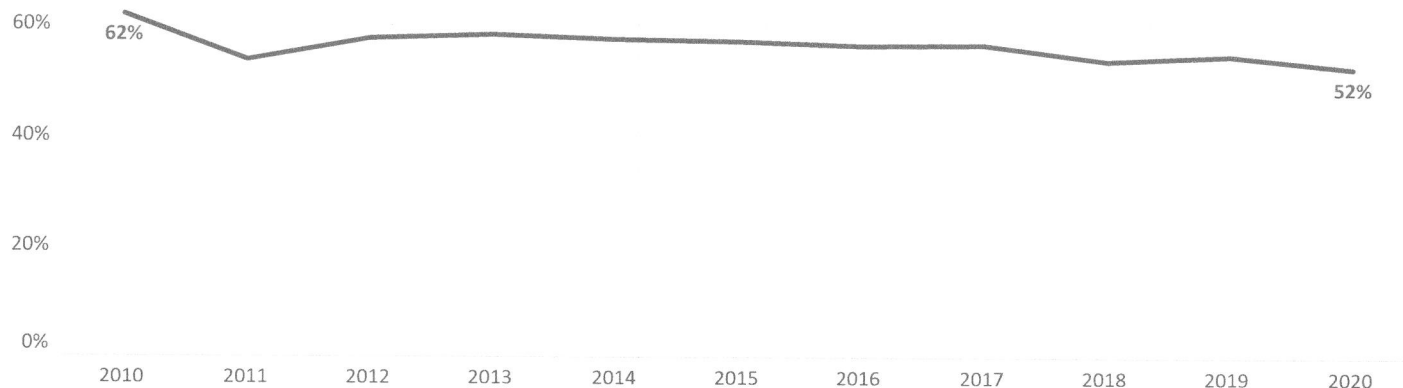


Data Table

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
American Indian/Alaska Native	8%	7%	7%	7%	7%	7%	6%	6%	6%	5%	6%
All other children	11%	10%	10%	10%	10%	9%	8%	8%	8%	8%	9%

Of American Indian/Alaska Native children exiting to adoption, what percent were adopted by non-Native families?

(In this section, American Indian/Alaska Native children are those who are identified as American Indian/Alaska Native alone and not in combination with another race/ethnicity.)



Data Table

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Caregiver does not identify as AIAN	62%	54%	58%	58%	58%	57%	56%	57%	54%	55%	52%
Caregiver identifies as AIAN	38%	46%	42%	42%	42%	43%	44%	43%	46%	45%	48%

It is difficult to provide a complete picture of outcomes in ICWA cases because existing federal data may be incomplete and over- or under-inclusive. The data capture only whether a state identified a child as being American Indian or Alaska Native, not whether a child's case was governed by ICWA.



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Native American/Alaska Native Children | Overview

The data provided is derived from Tableau analysis by staff at Casey Family Programs using the 2020 Adoption and Foster Care Analysis and Reporting System (AFCARS) data made available by the National Data Archive on Child Abuse and Neglect Data (NDACAN) at Cornell University.

Rate of children in care per 1,000 children in population?

(In this section, American Indian/Alaska Native children are those who are identified as American Indian/Alaska Native alone and not in combination with another race/ethnicity.)

National (per 1,000)

		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
National	American Indian/Alaska Native	10.4	10.4	11.4	12.5	14.6	15.5	15.7	15.9	15.8	15.4	15.0
	All other children	5.2	5.0	4.9	5.1	5.3	5.5	5.6	5.7	5.7	5.5	5.3

States (per 1,000)

		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Alaska	American Indian/Alaska Native	27.0	26.8	28.0	26.7	31.1	34.6	37.0	34.7	37.8	39.0	40.0
	All other children	5.8	5.6	5.7	6.7	7.3	9.8	10.4	10.3	9.9	10.3	10.2
Arizona	American Indian/Alaska Native	4.2	4.4	6.2	7.4	9.3	9.9	9.4	8.0	7.7	7.9	8.1
	All other children	5.6	6.4	7.9	8.7	9.8	10.8	10.4	9.1	8.1	8.0	7.9
Michigan	American Indian/Alaska Native	7.2	6.9	6.6	7.9	9.2	4.5	5.1	4.0	3.4	3.6	3.0
	All other children	6.6	6.1	5.7	5.7	5.6	5.5	5.2	5.4	5.5	5.3	4.8
Minnesota	American Indian/Alaska Native	38.0	39.0	52.6	62.7	83.9	95.2	108.2	120.3	112.1	92.7	82.3
	All other children	3.4	3.3	3.3	3.4	3.7	4.6	5.3	5.8	5.6	5.1	4.7
Montana	American Indian/Alaska Native	30.1	31.0	31.5	35.6	41.5	47.5	52.6	56.3	55.9	52.5	54.0
	All other children	5.4	5.4	6.0	7.0	7.2	8.8	10.8	12.7	13.1	12.2	10.4
New Mexico	American Indian/Alaska Native	3.3	2.9	2.8	3.0	4.2	4.3	4.4	3.8	3.1	2.8	3.1
	All other children	3.7	3.6	3.6	4.1	4.6	4.9	5.3	5.5	5.3	5.0	4.5
North Dakota	American Indian/Alaska Native	21.9	22.5	22.3	24.2	32.6	27.8	33.0	36.7	37.6	40.7	45.2
	All other children	5.7	5.3	5.5	6.1	6.2	6.2	5.8	5.8	6.1	5.4	5.2
Oklahoma	American Indian/Alaska Native	7.7	8.0	6.3	7.3	9.1	9.3	8.1	7.7	7.8	8.0	7.3
	All other children	8.7	8.8	9.9	11.6	12.4	12.0	10.8	9.9	9.1	8.7	8.5
Oregon	American Indian/Alaska Native	6.8	26.1	31.0	28.8	32.9	33.2	32.6	35.1	28.4	25.0	23.1
	All other children	9.8	9.2	8.8	8.5	8.0	8.1	8.3	8.4	8.2	7.4	6.5
South Dakota	American Indian/Alaska Native	29.3	27.5	25.2	20.2	21.1	23.1	24.0	28.3	31.1	34.1	32.3
	All other children	4.0	3.8	3.9	3.6	3.3	3.5	4.0	4.4	3.7	4.1	4.1
Washington	American Indian/Alaska Native	30.2	24.7	24.7	27.0	27.0	26.3	23.4	20.7	20.8	19.0	15.0
	All other children	5.9	5.5	5.5	5.8	6.1	6.0	6.1	6.3	6.2	5.8	5.0

It is difficult to provide a complete picture of outcomes in ICWA cases because existing federal data may be incomplete and over- or under-inclusive. The data capture only whether a state identified a child as being American Indian or Alaska Native, not whether a child's case was governed by ICWA.

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With ICWA Under Threat, More States Shore Up Laws to Protect Native Families from Foster Care Separation

BY NANCY MARIE SPEARS, SARA TIANO AND JEREMY LOUDENBACK



With the Indian Child Welfare Act facing a Supreme Court challenge, states have enacted their own versions to protect Indigenous families from separation. Illustration by Nanibah Chacon via Bold Futures NM.

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hen New Mexico's Democratic Gov. Michelle Lujan Grisham signed the Indian Family Protection Act last month, the historic collaboration between that state and its 23 tribes, nations and pueblos was described as more urgently needed than ever.

"Our culture, traditions and our very lives depend on it," a promotional video for the New Mexico bill stated.

A case now before the U.S. Supreme Court poses grave challenges to America's landmark federal law that makes it more difficult for local child welfare agencies to separate Indigenous children from their families and tribes. But as of last month, 10 states including New Mexico have enacted local policies to make sure their residents are protected should the federal law known as ICWA, the Indian Child Welfare Act, be struck down by the high court. The 10 states include several that are home to the largest Indigenous populations within United States borders.



Sarah Helvey of
Nebraska Appleseed.
Photo courtesy of
Nebraska Appleseed.

"We're seeing that the federal law is under attack," said Sarah Helvey, director of child welfare at the advocacy group Nebraska Appleseed. "One benefit of having a state ICWA statute is that depending on what happens with the federal law and the interpretation of that, we still have our state statute to protect Native families."

The threat to ICWA

The threat to ICWA is posed by the *Brackeen v. Haaland* case, which likely won't be resolved until next year, court-watchers say. The case is brought by the states of Texas, Louisiana and Indiana, and three sets of foster parents who argue that the federal law is unconstitutional and discriminates against them because they are white, violating their equal protection rights. Their lawyers have also argued that states can't be compelled to enforce federal law.

The original plaintiffs in the case — a Fort Worth, Texas evangelical couple, Jennifer and Chad Brackeen — assert that ICWA unfairly challenged their adoption of a Navajo toddler they'd been fostering. With a high-powered legal team and the backing of conservative think tanks, the case has moved forward even though the couple eventually adopted the boy and sought to adopt a girl identified in court documents as his half sister. The Brackeens are

represented by the Gibson, Dunn & Crutcher law firm, which has taken aim at tribal sovereignty in other cases, from the gaming industry to oil access — an indication of the high stakes associated with attacking ICWA.

Opposition to the Brackeen case, whose named defendant is Interior Secretary Deb Haaland, is equally as steadfast. So far 25 states, Washington, D.C., 180 tribes and 35 Native American organizations have filed amicus briefs, arguing that ICWA is not race-based, but based on agreements between tribal nations and the U.S. government, which follow centuries of oppression.

ICWA's defenders include a coalition of more than two dozen state prosecutors led by California's Attorney General Rob Bonta. The coalition represents states from Arizona to Iowa to Rhode Island — collectively home to 86% of all federally recognized tribes. In their amicus brief, the attorneys general write that their states disagree on many things, "but we all agree that ICWA is a critical — and constitutional — framework for managing state-tribal relations and for protecting the rights and stability of Indian children, families, and Tribes."



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Although poorly enforced and even more poorly tracked, the 1978 law requires child welfare agencies to go to greater lengths to preserve families before children who are enrolled members of federally recognized tribes — or those eligible for enrollment — can be separated from their parents. Under ICWA, when kids are taken into foster care, their relatives, tribal members and other Native groups must be given preference over non-Native foster homes. The law allows tribal courts to take jurisdiction over foster care cases from state courts, providing Indigenous communities the opportunity to decide the fate of their children and keep them close to their culture and kin.

ICWA became law as an attempt to combat cultural genocide following the U.S. government's devastating history of forcibly removing Native children and sending them into boarding schools and the homes of white, Christian adoptive families. But even with its extra layers of protection, according to federal statistics, America's Indigenous children remain three times more likely to be taken into foster care than white children.

If the federal law is struck down, there could be dire impacts in communities across Indian Country. In the meantime, advocates for Native Americans in states that have buttressed the Indian Child Welfare Act's protections with local laws say they are feeling grateful — and they urge other states to follow suit.

“With the U.S. Supreme Court agreeing to weigh in on the *Brackeen v. Haaland* case, the protection of the Indian Child Welfare Act is paramount for the First People of this country,” Navajo Nation President Jonathan Nez announced March 3 upon the passage of New Mexico's House Bill 135.

The new law affirms and codifies ICWA provisions, but also adds to the New Mexico Children's Code, requiring the state to make additional efforts for Indian children entering the child welfare system. Those efforts include notifying tribes within 24 hours of any abuse or neglect investigation, providing culturally appropriate family preservation resources and conducting diligent searches to find relative caregivers.

Jacqueline Yalch, president of the New Mexico Tribal Indian Child Welfare Consortium, pointed to other examples: Babies younger than three months cannot be placed outside of Indigenous homes under the new state law. Courts must also consider whether there are alternatives to terminations of parental rights, and whether that outcome would be reflective of tribal customary practices.



Navajo Nation President Jonathan Nez.

In addition, New Mexico now mandates “cultural compacts,” that must be entered into whenever a child is placed for adoption or guardianship with a family that does not include a parent who is a member of the Indian child's tribe. In those cases, the compacts require documentation of how the child will actively participate in cultural learning and activities.

Through passage of the Indian Family Protection Act, Nez said, “the State of New Mexico has set a great example,” adding, “we pray that other states follow the same path.”

Even with ICWA as the law of the land for 44 years, it has been far from a cure-all for the hardships faced by Indigenous families investigated for child maltreatment. Under federal law, “active efforts” — rather than the lower standard of “reasonable efforts” — must be

made by child welfare agencies to prevent tribal family separation. Allison Dunnigan, an assistant professor at the School of Social Work at the University of Georgia described those policies as “our best practices on steroids.”

But there is no tracking of compliance to ensure these amped-up requirements are being met.

What’s more, only 35 of 50 states have federally recognized tribes, and members of non-federally enrolled tribes may be afforded no ICWA protection, Dunnigan noted, unless their state has broadened eligibility through a local law or agreement with a specific tribe.

Ten states protected

California, Oregon, Washington, Iowa, Minnesota, Michigan, Nebraska, New Mexico, Wisconsin and Oklahoma each have laws that codify the federal protections under ICWA and augment them, said David Simmons, director of government affairs and advocacy for the National Indian Child Welfare Association. Simmons added that in addition to those 10 states, many others have references to federal ICWA requirements in their laws, regulations, program guidance or intergovernmental agreements with tribes. Some states also have intergovernmental agreements between their child welfare agencies and one or more tribes, including those that are not recognized by the federal government, he said.

At least eight states with plans enshrined in law go beyond the federal standard by requiring courts to notify tribes in voluntary proceedings, such as private adoptions. Another improvement in many state ICWA plans is more stringent standards for who can serve as a “qualified expert witness,” requiring that when possible those experts have specific knowledge or personal experience of the child’s tribe.

Simmons said such information “helps judges better evaluate the situation before they order an out-of-home removal or even a termination of parental rights.”

California, home to roughly 15% of the nation’s federally recognized tribes, has the highest Native American population of any state — with an estimated 1.4 million people who are Indigenous. In 2006, Republican Gov. Arnold Schwarzenegger signed that state’s version of federal protections into law.

The state laws in California apply to children who are not members of federally recognized tribes, and to those with probate guardianship and not just foster care cases. Cal-ICWA, as it is called, also goes beyond the “active efforts” standards required to place Native children with kin or tribal members, requiring the documentation of those efforts. If a child is placed

in a non-Native home, preference must be given to foster families committed to preserving their tribal connections.

Several subsequent laws have also been passed that strengthen Cal-ICWA. They include a 2009 law that allows for tribal adoptions to take place without terminating birth parents' rights — a more “culturally consistent permanency option,” according to a state-appointed panel of experts.

But despite the strong laws, a 2017 report on ICWA compliance produced for the California Attorney General found that when tribes don't intervene in cases, the law is rarely followed with fidelity, and that too often the tribes lack the resources to step in.

Poor compliance issues in California included tribes not being notified when their members are involved in child welfare cases, and failure to engage in “active efforts” to prevent removing children from their homes. The report by tribal leaders also found a reluctance to share relevant information with tribes, such as home studies and background checks, hindering their ability to participate meaningfully in the children's cases and to identify tribal foster homes.

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The authors concluded: “Tribal leaders, tribal social workers and tribal attorneys disclosed instances all over the state and at all stages of cases where non-compliance with the ICWA had devastating effects on tribes and tribal families.”

States with far fewer Native Americans have also sought to protect them from the otherwise strict mandates of the foster care system. Claudette Grinnell-Davis — a University of Oklahoma social work assistant professor who has studied the Nebraska Indian Child Welfare Act — said that midwestern state's laws go into great detail on the “best interests” of children, and what “active efforts” must entail.

Nebraska's state provisions require social workers to assist Native families “in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe or tribes.” They must assist the child's extended family members with “culturally appropriate” resources, as well as help with housing, finances and transportation.

needs. Nebraska's law requires the "exhaustion of all available tribally appropriate family preservation alternatives" before non-Native foster homes can be sought.

"That's one of the biggest things about this act in Nebraska, is that it not only spells out what they're dedicated to, but how they're dedicated to accomplishing," Grinnell-Davis said. "They went into exquisite detail."

A fiscal impact report published in January by the New Mexico Legislature stated the grave stakes foreseen in states that don't pass local laws to reinforce the role that ICWA has long played.

"If the federal Indian Child Welfare Act were partially or completely invalidated by the courts," the document states, "Indian children might again be subjected to the much higher rates of removal from their homes and from their cultures that prevailed before the 1978 law was passed."

This story has been updated to more accurately describe the plaintiffs in the Brackeen v. Haaland case.

EXPLORE THE IMPRINT

Brackeen v. Haaland	California	ICWA	Indian Child Welfare Act	Indigenous
Navajo Nation	Nebraska	New Mexico	U.S. Supreme Court	

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11 STATES CURRENTLY WITH STATE IMPLEMENTED ICWA

California (2006)

- California Judges Benchguide to the ICWA, (guide to proper implementation of ICWA)
- In 2006, Republican Gov. Arnold Schwarzenegger signed that state's version of federal protections into law.
- California has 109 federally recognized tribes and the largest Native American population in the nation, comprised of both California Native Americans and Native Americans affiliated with tribes throughout the nation.

Connecticut (2022)

- HB 5336 legislation ensures that proceedings involving an Indigenous child's custody, placement in a foster or adoptive home or termination of parental rights "is conducted in accordance with the Indian Child Welfare Act.

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Iowa (2003)

- Iowa's is considered a model statute and is the first state statute to fully deal with ICWA issues. (Lewis 2004, 4).
- Noted instance where Iowa law extends ICWA to children recognized by tribes as members. (Fort 2009, 29).

Michigan (2012)

- Michigan Indian Family Preservation Act (MIFPA)
- MIFPA codifies the federal ICWA into state law and clarifies the court proceedings subject to the Act. MIFPA amended the Juvenile Code by adding section MCL 712B.1 – 712B.41.

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Minnesota (1985)

- §260.751 Minnesota Indian Family Preservation Act (MIFPA) Requirements for Child Welfare
- In 1983, the Minnesota Legislature became the first legislative body in the country to adopt specific statutory language to clarify adoption and foster care policy on the placement of minority children. Commonly referred to as the Minority Child Heritage Protection Act or the Minority Child Heritage Preservation Act, the law established an order of preference for placement of minority children. (Minnesota Legislative Reference Library 2014).
- "Native American children ... are covered by the federal Indian Child Welfare Act of 1978 and the Minnesota Indian Family Preservation Act. (*Minnesota Statutes*, sections 260.751 - 260.835) which seek to preserve Native American families." The initial Minnesota law was passed in 1985 (*Laws of Minnesota 1985*, chapter 111). That same year Minnesota also created the Minnesota Family Preservation Act (*Laws of Minnesota 1985 1st Special Session*, chapter 9, article 2, sections 69-75). It was repealed in 2003. (Minnesota Legislative Reference Library 2014).

Nebraska (1985)

- Indian Child Welfare Act Guide: Guidance for CFS Staff (2013)
- In 1985, Nebraska enacted a state version of the ICWA, which essentially mirrors the federal statute. (Nebraska Appleseed, 2014).

New Mexico (2022)

- The new law affirms and codifies ICWA provisions, but also adds to the New Mexico Children's Code, requiring the state to make additional efforts for Indian children entering the child welfare system. Those efforts include notifying tribes within 24 hours of any abuse or neglect investigation, providing culturally appropriate family preservation resources and conducting diligent searches to find relative caregivers.
- New Mexico mandates "cultural compacts," that must be entered into whenever a child is placed for adoption or guardianship with a family that does not include a parent who is a member of the Indian child's tribe. In those cases, the compacts require documentation of how the child will actively participate in cultural learning and activities.

Washington (2011)

- "Washington State Indian Child Welfare Act (WSICWA), which mirrors the current federal policy" (Smith & Okrent 2013, 146)
- "[P]olicy of Washington State is that it is in the per se best interest of Indian children to be placed in the homes of Indian families, and that at every stage of child custody cases involving Indian children Washington State courts must respect the jurisdictional rights of Indian tribes." (Smith & Okrent 2013, 147).
- Articles purpose is "(3) to demonstrate that the WSICWA is rightfully more protective of Indian tribes and Indian children's interests than Washington State courts' jurisprudence; and (4) to analyze the merits of the recent United States Supreme Court decision on the ICWA, and demonstrate that the WSICWA also offers better protections for Indian tribes than the Supreme Court's jurisprudence." (Smith & Okrent 2013, 147).
- The Act is a codification into Washington State law of the federal ICWA and certain provisions of the BIA guidelines. (Smith & Okrent 2013, 157-8).
- The WSICWA creates uniform procedures for all child custody cases involving Indian children in Washington State and gives state courts better direction on the vague language contained in the ICWA. (Smith & Okrent 2013, 158).
- "Additionally, The WSICWA serves as a model for sister states to adopt. In addition to creating greater protections for Indian tribes and children, the WSICWA is state legislation which obviates any constitutional concerns over the scope of the Indian Commerce Clause, and places Indian child custody proceedings firmly within the realm of state and Indian tribal court law and jurisprudence." (Smith & Okrent 2013, 172).

Wisconsin (2009)

- Wisconsin Indian Child Welfare Act

- The State of Wisconsin codified the Federal Indian Child Welfare Act into Chapters 48 and 938 in 2009. The Wisconsin law essentially mirrors the ICWA and implements the minimum standards referenced in ICWA. ([Wisconsin Indian Child Welfare Act Desk Aid](#)).

STATES INTRODUCING STATE ICWA LAWS

Wyoming (2023)

- SF 94; An act relating to domestic relations; codifying the federal Indian Child Welfare Act as state law; specifying requirements and procedures for the placement of Indian Children in shelter care or for adoption; making conforming amendment; specifying applicability; requiring rulemaking; and providing for an effective date.
- HB 19; An act relating to children, creating the state Indian Child Welfare Act task force; specifying members of the duties of the task force; providing appropriations; and providing for effective date.

North Dakota (2023)

- A BILL for an Act to create and enact sections 27-20.3-19.1, 27-20.3-19.2, 27-20.3-19.3, 27-20.3-19.4, and 27-20.3-19.5 of the North Dakota Century Code, relating to adopting a state Indian child welfare act; and to amend and reenact section 27-20.3-19 of the North Dakota Century Code, relating to Indian child welfare.

(2) Within seven months from the date of this Act, the Secretary shall present the proposed rules and regulations to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

(3) Within eight months from the date of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act.

(b) The Secretary is authorized to revise and amend any rules and regulations promulgated pursuant to this section: *Provided*, That prior to any revisions or amendments to such rules and regulations, the Secretary shall present the proposed revision or amendment to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives and shall, to the extent practicable, consult with tribes, organizations, and groups specified in subsection (b)(1) of this section, and shall publish any proposed revisions or amendments in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and to receive comments from, other interested parties.

TITLE IV—PLACEMENT PREVENTION STUDY

SEC. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provisions of educational facilities for children in the elementary grades.

SEC. 402. Within sixty days after enactment of this Act, the Secretary shall send to the Governor, Chief Justice of the highest court of appeal, and the Attorney General of each State a copy of this Act, together with Committee reports and an explanation of the provisions of this Act.

SEC. 403. If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

PURPOSE

The purpose of the bill (H.R. 12533), introduced by Mr. Udall et al.,¹ is to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes or institutions which will reflect the unique values of Indian culture and by providing for assistance to Indian tribes and organizations in the operation of child and family service programs.

BACKGROUND

*** I can remember (the welfare worker) coming and taking some of my cousins and friends. I didn't know why and I didn't question it. It was just done and it had always been done ***²

¹ H.R. 12533 was introduced by Representatives Udall, Roncallo, Baucus, Bingham, Blouin, Burke of California, Phillip Burton, Carr, Dellums, Fraser, Miller of California, Risenhoover, Seiberling, Stark, Tsongas, Vento, and Weaver. A similar bill, S. 1214, has been approved by the Senate.

² Testimony of Valancia Thacker before Task Force 4 of the American Indian Policy Review Commission.

The wholesale separation of Indian children from their families is perhaps the most tragic and destructive aspect of American Indian life today.

Surveys of States with large Indian populations conducted by the Association on American Indian Affairs (AAIA) in 1969 and again in 1974 indicate that approximately 25-35 percent of all Indian children are separated from their families and placed in foster homes, adoptive homes, or institutions. In some States the problem is getting worse: in Minnesota, one in every eight Indian children under 18 years of age is living in an adoptive home; and, in 1971-72, nearly one in every four Indian children under 1 year of age was adopted.

The disparity in placement rates for Indians and non-Indians is shocking. In Minnesota, Indian children are placed in foster care or in adoptive homes at a per capita rate five times greater than non-Indian children. In Montana, the ratio of Indian foster-care placement is at least 13 times greater. In South Dakota, 40 percent of all adoptions made by the State's Department of Public Welfare since 1967-68 are of Indian children, yet Indians make up only 7 percent of the juvenile population. The number of South Dakota Indian children living in foster homes is per capita, nearly 16 times greater than the non-Indian rate. In the State of Washington, the Indian adoption rate is 19 times greater and the foster care rate 10 times greater. In Wisconsin, the risk run by Indian children of being separated from their parents is nearly 1,600 percent greater than it is for non-Indian children. Just as Indian children are exposed to these great hazards, their parents are too.

The Federal boarding school and dormitory programs also contribute to the destruction of Indian family and community life. The Bureau of Indian Affairs (BIA), in its school census for 1971, indicates that 34,538 children live in its institutional facilities rather than at home. This represents more than 17 percent of the Indian school age population of federally-recognized reservations and 60 percent of the children enrolled in BIA schools. On the Navajo Reservation, about 20,000 children or 90 percent of the BIA school population in grades K-12, live at boarding schools. A number of Indian children are also institutionalized in mission schools, training schools, etc.

In addition to the trauma of separation from their families, most Indian children in placement or in institutions have to cope with the problems of adjusting to a social and cultural environment much different than their own. In 16 States surveyed in 1969, approximately 85 percent of all Indian children in foster care were living in non-Indian homes. In Minnesota today, according to State figures, more than 90 percent of nonrelated adoptions of Indian children are made by non-Indian couples. Few States keep as careful or complete child welfare statistics as Minnesota does, but informed estimates by welfare officials elsewhere suggest that this rate is the norm. In most Federal and mission boarding schools, a majority of the personnel is non-Indian.

It is clear then that the Indian child welfare crisis is of massive proportions and that Indian families face vastly greater risks of involuntary separation than are typical of our society as a whole.

rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen.

And in *United States v. Nice*, 241 U.S. 591 (1916), the Court held:

The power of Congress to regulate or prohibit traffic with tribal Indians within a State whether upon or off an Indian reservation is well settled * * *. Its source is twofold; first, the clause of the Constitution expressly investing Congress with authority "to regulate Commerce * * * with the Indian tribes", and, second, the dependent relation of such tribes to the United States.

It cannot be questioned that Congress has broad, unique powers with respect to Indian tribes and affairs. There is only one caveat: While those powers may be plenary, the exercise may not be arbitrary. For example, Congress may not take Indian property without just compensation nor may it establish a religion for Indian tribes.

Plenary power and child welfare

The question then is: "Is the regulation of child custody proceedings and the imposition of minimum Federal standards an appropriate exercise of Congress plenary power over Indian affairs?"

We need only cite three cases to lay the foundation for the power of Congress to legislate in this area. In *U.S. v. Holliday*, 70 U.S. 407 (1866), the Court said:

Commerce with foreign Nations, without doubt, means commerce between citizens of the United States and citizens or subjects of foreign governments as individuals. And so commerce with Indians tribes means commerce with the individuals composing those tribes.

In *Dick v. U.S.*, 208 U.S. 340 (1908), the Court held:

As long as these Indians remain a distinct people, with an existing tribal organization, recognized by the political department of the Government, Congress has power to say with whom, and on what terms, they shall deal * * *.

Knoepfler, in *Legal Status of American Indian & His Property* (1922), 7 La. L.B. 232, stated: "Commerce with the Indian tribes has been construed to mean practically every sort of intercourse with the Indians either in the tribes or as individuals."

Finally, the Maryland Court of Appeals, in a case involving the attempted adoption of an Indian child (*Wakefield v. Little Light*, 276 Md. 333, 347 A.2d 228 (1975)), stated:

We think it plain that child-rearing is an "essential tribal relation" within * * * (the test of) *Williams v. Lee* (358 U.S. 217 (1959)).

And again:

* * * (C)onsidering that there can be no greater threat to 'essential tribal relations' and no greater infringement on the right of the * * * tribe to govern themselves than to interfere with tribal control over the custody of their children, we agree with the conclusion expressed in *Wisconsin Potowatomies v. Houston*, 393 F. Supp. 719 (1973)) that in determining subject matter jurisdiction in such circumstances, the only rational approach is to determine the domicile of the Indian child. By using the Indian child's domicile as the State's jurisdictional basis, the Indian tribe is afforded significant protection from losing its essential rights of childrearing and maintenance of tribal identity.

Even this State court recognized that a tribe's children are vital to its integrity and future. Since the United States has the responsibility to protect the integrity of the tribes, we can say with the *Kagama* court, " * * * there arises the duty of protection, and with it the power."

Geographic scope of plenary power

Is the Congress limited to Indian lands or to the reservation in the exercise of its plenary power over Indian affairs? The answer is clearly, "No". Again, we need only cite one or two cases to support this conclusion.

In *U.S. v. Holliday*, supra, the Court said:

If commerce, or traffic, or intercourse is carried on with an Indian tribe, or with a member of such tribe, it is subject to be regulated by Congress; although within the limits of a State. The locality of the traffic can have nothing to do with the power. (Emphasis added.) The right to exercise it in reference to any Indian tribe, or any person who is a member of such tribe, is absolute, without reference to the locality of the traffic, or the locality of the tribe, or the member of the tribe with whom it is carried on.

In *Perrin v. U.S.*, 232 U.S. 487 (1914), the Court held:

We come, then, to the objection that the prohibition in the act of 1894 confers an unnecessarily extensive territory and is not limited in duration, and so transcends the power of Congress. As the power is incident only to the presence of the Indians and their status as wards of the Government, it must be conceded that it does not go beyond what is reasonably essential to their protection, and that, to be effective, its exercise must not be purely arbitrary, but founded upon some reasonable basis. * * * On the other hand, it must also be conceded that, in determining what is reasonably essential to the protection of the Indians Congress is invested with a wide discretion and its action, unless purely arbitrary, must be accepted and given full effect by the courts.

We cite again *U.S. v. Nice*, supra: "The power of Congress to regulate or prohibit traffic with tribal Indians within a State whether upon or off an Indian reservation is well settled * * *." (Emphasis added.)

Membership and plenary power

The question occurs, as raised by the Department of Justice in its report: "Is the power of Congress limited, constitutionally, to only those individuals who are formally enrolled as members of an Indian tribe?" Again, the answer is negative.

In 1934, Congress enacted the Indian Reorganization Act of June 18, 1934 (48 Stat. 983). Section 19 defined "Indians" as:

* * * all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood.

Categories two and three of this definition are clearly not enrolled members of a tribe, by definition; yet Congress conferred the rights and benefits of the act upon this class of Indians, including the right to preference in Federal employment in the Bureau of Indian Affairs and the Indian Health Service. When the Supreme Court was called upon to construe the constitutionality of the Indian preference section of the Indian Reorganization Act in the case of *Morton v. Mancari*, 417 U.S. 535 (1974), it was aware that Indians who were not enrolled members of a tribe were made eligible for this preference by act of Congress, but did not strike the law down as invidiously discriminatory.

The reason it did not was because it was aware of its own past decisions with respect to congressional power over Indians not members of a tribe, Congress may disregard the existing membership rolls and direct that per capita distributions be made upon the basis of a new roll, even though such act may modify prior legislation, treaties, or agreements with the tribe. *Stephens v. Cherokee Nation*, 174 U.S. 445 (1899). Thus, the Supreme Court in the case of *Sizemore v. Brady*, 235 U.S. 441 (1914), said:

* * * Like other tribal Indians, the Creeks were wards of the United States, which possessed full power, if it deemed such a course wise, to assume full control over them and their affairs, to ascertain who were members of the tribe * * *.

In *Federal Indian Law*, at page 45 in note 10, it is said:

It has been held that Congress is not bound by the tribal rule regarding membership and may determine for itself whether a person is an Indian from the standpoint of a Federal criminal statute. *United States v. Rogers*, 4 How. 567 (1846).

In the very recent case of *United States v. Antelope*, 45 U.S.L.W. 4361 (April 19, 1977), the Supreme Court said:

It should be noted, however, that enrollment in an official tribe has not been held to be an absolute requirement for federal jurisdiction. * * *

Federal District Court Judge Battin, in *Dillon v. Montana*, (1978), ordered:

2. That for purposes of applying this (Federal) exemption, the class of "Indian persons" * * * shall include persons possessing the following qualifications:

(a) that the person possess some quantum of Indian blood;

(b) that the person be recognized as an Indian by the community in which he or she lives, and that the putative taxpayer's wardship status has not been terminated by the government;

(c) that the person be an enrolled member of a federally recognized Indian tribe or otherwise eligible to be recognized as an Indian ward by the Federal Government. (Emphasis added.)

If the courts have found that Congress has the power to act with respect to nonenrolled Indians in the foregoing kinds of circumstances, how much more is its power to act to protect the valuable rights of a minor Indian who is eligible for enrollment in a tribe? This minor, perhaps infant, Indian does not have the capacity to initiate the formal, mechanical procedure necessary to become enrolled in his tribe to take advantage of the very valuable cultural and property benefits flowing therefrom. Obviously, Congress has power to act for their protection. The constitutional and plenary power of Congress over Indians and Indian tribes and affairs cannot be made to hinge upon the cranking into operation of a mechanical process established under tribal law, particularly with respect to Indian children who, because of their minority, cannot make a reasoned decision about their tribal and Indian identity.

Supremacy clause versus States' rights

From the foregoing, it is clear that Congress has full power to enact laws to protect and preserve the future and integrity of Indian tribes by providing minimal safeguards with respect to State proceedings for Indian child custody. The final question is, paraphrasing the Department of Justice; "Does Congress have power to control the incidents of child custody litigation involving nonreservation Indian children and parents pursuant to the Indian commerce clause sufficient to override the significant State interest in regulating the procedure to be followed by its courts in exercising jurisdiction over what is traditionally a State matter?"

First, let it be said that the provisions of the bill do not oust the State from the exercise of its legitimate police powers in regulating domestic relations.

The decisions of the Supreme Court will set to rest the principal objection. It is appropriate to begin with the landmark case of *McCulloch v. Maryland*, 17 U.S. 316 (1819), where the Court stated:

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

In *Brown v. Western Ry. Co.*, 338 U.S. 294 (1949), the Court said:

The argument is that while state courts are without power to detract from "substantive rights" granted by Congress * * * they are free to follow their own rules of "practice" and "procedure" * * *. A long series of cases previously decided, from which we see no reason to depart,

makes it our duty to construe the allegations of this complaint ourselves in order to determine whether petitioner has been denied a right of trial granted him by Congress. This federal right cannot be defeated by forms of local practice. * * * Strict local rules of pleading cannot be used to impose unnecessary burdens upon rights of recovery authorized by Federal laws.

In *Dice v. Akron, C.Y.Y. R.R. Co.*, 342 U.S. 359 (1952), the Court held:

Congress * * * granted petitioner a right. * * * State laws are not controlling in determining what the incidents of this Federal right shall be."

Chief Justice Holmes, in *Davis v. Wechsler*, 263 U.S. 22 (1923), put it succinctly:

Whatever springs the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.

We will quote merely two other cases to support the proposition that Congress may, constitutionally, impose certain procedural burdens upon State courts in order to protect the substantive rights of Indian children, Indian parents, and Indian tribes in State court proceedings for child custody.

The Court, in *American Railway Express Co. v. Levee*, 263 U.S. 19 (1923), held that:

The laws of the United States cannot be evaded by the forms of local practice * * *. The local rules applied as to the burden of proof narrowed the protection that the defendant had secured (under Federal law), and therefore contravened the law.

And finally, in an extensive quote from the landmark decision of the Court in *Second Employers' Liability Cases*, 223 U.S. 1 (1912), we examine the duty of State courts, otherwise having jurisdiction over the subject matter, to enforce Federal substantive rights:

We come next to consider whether rights arising from congressional act may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local law, is adequate to the occasion * * *. (The State court was of the opinion that it could decline to enforce the Federal right) because * * * it would be inconvenient and confusing for the same court, in dealing with cases of the same general class, to apply in some the standard of right established by congressional act and in others the different standards recognized by the laws of the State. * * * It never has been supposed that courts are at liberty to decline cognizance of cases merely because the rules of law to be applied in their adjudication are unlike those applied in other cases.

We conclude that rights arising under the (Federal) act in question may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local law, is adequate to the occasion.

Conclusion

Under the rules of the House, this committee has been charged with the initial responsibility in implementing the plenary power over, and responsibility to, the Indians and Indian tribes. In the exercise of that responsibility, the committee has noted a growing crisis with respect to the breakup of Indian families and the placement of Indian children, at an alarming rate, with non-Indian foster or adoptive homes. Contributing to this problem has been the failure of State officials, agencies, and procedures to take into account the special problems and circumstances of Indian families and the legitimate interest of the Indian tribe in preserving and protecting the Indian family as the wellspring of its own future.

While the committee does not feel that it is necessary or desirable to oust the States of their traditional jurisdiction over Indian children falling within their geographic limits, it does feel the need to establish minimum Federal standards and procedural safeguards in State Indian child custody proceedings designed to protect the rights of the child as an Indian, the Indian family and the Indian tribe.

SECTION-BY-SECTION ANALYSIS

As amended by the committee, the legislation completely rewrites S. 1214 as passed by the Senate. In addition, the amendment in the nature of a substitute for H.R. 12533, as further amended, differs significantly from H.R. 12533 as introduced. The following is a section-by-section analysis of the bill as reported with appropriate explanations.

Section 1

Section 1 provides that the bill may be cited as the "Indian Child Welfare Act of 1978".

Section 2

Section 2 contains congressional findings. As amended, it lays the foundations for the power and responsibility of the Congress to legislate in the field of Indian child welfare.

Section 3

Section 3 contains a congressional declaration of policy. As amended, the section makes clear that the underlying principle of the bill is in the best interest of the Indian child. However, the committee notes that this legal principle is vague, at best. In a footnote on page 835 in the decision of *Smith v. OFFER*, 431 U.S. 820 (1977), the Supreme Court stated:

Moreover, judges too may find it difficult, in utilizing vague standards like "the best interests of the child", to avoid decisions resting on subjective values."

SECTION 4

Section 4 defines various terms used in the bill.

Paragraph (1) defines the term "child custody placement" by defining four discrete legal proceedings included within the term. S. 1214 and H.R. 12533, as introduced, used the term "placement" which proved to be ambiguous with respect to the various provisions



2023 Session

Additional Documents

- **Business Report.**
- **Roll Call -Attendance.**
- **Standing Committee Reports.**
- **Tabled Bills.**
- **Fiscal Reports [if any]**
- **Roll Call Votes.**
- **Proxies signed in ink.**
- **Visitor's sign-in sheet/log.**
- **Informational Items.**
- **Witness Statements [if any]**
- **Internet Testimony Information & index**
- **Any other type of documents, Petitions, {if any}**
Emails, all documents given to Committee Secretary
before & after meeting.
- **Public Testimony documents may or may not be**
scanned, they will be on file at the Montana
Historical Society.
- **Disclaimer: within the online minutes document you**
will see vacate spaces, possible spelling issues and
format glitches, the LAWS II system creates these
blank areas they are not loss of information the
other problems may be caused by auto populator.
- **The original exhibits/items are on file at the Montana**
Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT
MONTANA HOUSE
REGULAR
(H) Human Services

Date: 02/01/2023

Time: 3:00 PM

Place: Capitol

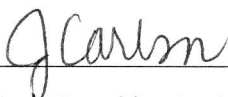
Room: 152

BILLS and RESOLUTIONS HEARD:

HB 317 Provide for the Montana Indian Child Welfare Act - Rep. Jonathan Windy Boy

EXECUTIVE ACTION TAKEN:

Comments:


Rep. Jennifer Carlson-R, Chair

House

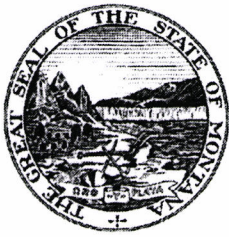
Roll Call

(H) Human Services

DATE: 02/01/2023

TIME: 3:00 PM

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/EXCUSED</u>
Abbott, Kim	X	
Buckley, Alice	X	
Buttrey, Edward	X	
Carlson, Jennifer	X	
Etchart, Jodee	X	
Frazer, Gregory	X	
Hawk, Donavon	X	
Hinkle, Caleb	X	
Howell, SJ	X	
Marshall, Ron	X	
Nicol, Nelly	X	
Nikolakakos, George	X	
Oblander, Greg	X	
Regier, Amy	X	
Rusk, Wayne	X	
Sheldon-Galloway, Lola		X
Smith, Laura	X	
Stafman, Ed	X	
Welch, Tom	X	
Yakawich, Michael	X	
Zephyr, Zooey	X	



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

HUMAN SERVICES COMMITTEE

DATE 2/1/23

BILL NO: HB 317

SPONSOR(S): Rep. Windy Boy

SHORT TITLE: Provide for the Montana Indian Child Welfare Act

Please leave prepared testimony with the clerk.

Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Keegan Medrano	ACLU-MT	X		
Sharon Kickinghoman	ACLU-MT	X		
Alyssa Reley	ACLU MT	X		
Kelly Driscoll	Individual Capacity	X		
Brooke Baracker-Taylor	Individual capacity	X		
Dawn Gray	Blackfeet Tribe	X		
Gerard Padgett	Blackfeet Tribe	X		
Jarey Anderson	MREA	X		
Brian Spencer	State Bar MT		X	
Susan Webb	SPB	X		
Nicole Grossberg	CFSO			X
Jane Elliot-Jane	MAIC	X		
Patrick Yaw ARJE	Blackfeet	X		
Fred Fisher	INDIVIDUAL	X		
Robin Turner	MCABSV	✓		
Rep Susan Steyer	HD 42	✓		
Leo Thompson	Citizen	X		

HUH - House Human Services Remote Testimony Request - 02/01/2023 @ 1500

Date	Committee	Bill Type	No.	Position	Requester Name	Location	Email	Phone	Affiliation	Comments	Past Deadline
02/01/2023	HUH	HB	317	Proponent	Ta'jin Perez	Billings	[REDACTED]	[REDACTED]	Western Native Voice		
02/01/2023	HUH	HB	317	Proponent	Georgette Hogan Boggio	Billings	[REDACTED]	[REDACTED]	Crow Tribe of Indians ICWA Program		
02/01/2023	HUH	HB	317	Proponent	Travis McAdam	Helena	[REDACTED]	[REDACTED]	Montana Human Rights Network	Written testimony	
02/01/2023	HUH	HB	317	Proponent	Lenore Myers-Nault	Box Elder	[REDACTED]	[REDACTED]	Rocky Boy Chippewa Cree Tribe		
02/01/2023	HUH	HB	317	Proponent	Cora Neumann	Bozeman	[REDACTED]	[REDACTED]	Native American development corporation	Written testimony	
02/01/2023	HUH	HB	317	Proponent	Shelly Fyant	Arlee	[REDACTED]	[REDACTED]	N/A		
02/01/2023	HUH	HB	317	Proponent	Linda schmitt	Corvallis	[REDACTED]	[REDACTED]	N/A		
02/01/2023	HUH	HB	317	Proponent	Danny Tenenbaum	Missoula	[REDACTED]	[REDACTED]	N/A		
02/01/2023	HUH	HB	317	Proponent	Kate Rebecca Morris	Missoula	[REDACTED]	[REDACTED]	N/A	Written testimony	
02/01/2023	HUH	HB	317	Proponent	Yolanda Page	Pablo	[REDACTED]	[REDACTED]	The Confederated Salish and Kootenai Tribes	Written testimony	
02/01/2023	HUH	HB	317	Proponent	Brooke Swaney	Polson	[REDACTED]	[REDACTED]	N/A	Written testimony	
02/01/2023	HUH	HB	317	Proponent	Carrie Spotted Bear	Browning	[REDACTED]	[REDACTED]	Zero to Five Montana		
02/01/2023	HUH	HB	317	Proponent	Cherilyn DeVries	Helena	[REDACTED]	[REDACTED]	Montana Human Rights Network	Written testimony	
02/01/2023	HUH	HB	317	Proponent	Lauren Wilson MD	Missoula	[REDACTED]	[REDACTED]	Montana Chapter, American Academy of Pediatrics		
02/01/2023	HUH	HB	317	Proponent	Kendra Potter	Missoula	[REDACTED]	[REDACTED]	N/A		
02/01/2023	HUH	HB	317	Proponent	Cinda ironmaker	Billings	[REDACTED]	[REDACTED]	N/A		
02/01/2023	HUH	HB	317	Proponent	Mariah Welch	Billings	[REDACTED]	[REDACTED]	N/A		
02/01/2023	HUH	HB	317	Proponent	Lillian Alvernaz	Harlem	[REDACTED]	[REDACTED]	Indian Law Section		
02/01/2023	HUH	HB	317	Proponent	Loni Taylor Tribal Leader	Rocky Boy	[REDACTED]	[REDACTED]	N/A		
02/01/2023	HUH	HB	317	Proponent	Amy Sings In The Timber	Missoula	[REDACTED]	[REDACTED]	N/A		
02/01/2023	HUH	HB	317	Proponent	Izzy Milch	Missoula	[REDACTED]	[REDACTED]	Forward Montana		
02/01/2023	HUH	HB	317	Opponent	Mark Fiddler, Esq	Minneapolis, Minnesota	[REDACTED]	[REDACTED]	N/A	Written testimony	
02/01/2023	HUH	HB	317	Informational Witness	Eldena Bear Don't Walk	Polson	[REDACTED]	[REDACTED]	Office of the Public Defender		
02/01/2023	HUH	HB	317	Informational Witness	Makayla Weaselboy	Billings	[REDACTED]	[REDACTED]	Billings Urban Indian Health and Wellness Center	Written testimony	
02/01/2023	HUH	HB	317		Iris Kill Eagle		[REDACTED]	[REDACTED]			
02/01/2023	HUH	HB	317		Brandi Johnson		[REDACTED]	[REDACTED]			

MINUTES
MONTANA HOUSE OF REPRESENTATIVES
68th LEGISLATURE - REGULAR SESSION
COMMITTEE ON (H) HUMAN SERVICES

Call to Order: Chair Jennifer Carlson-R, on February 21, 2023 at 3:03 PM, in 152

ROLL CALL

Members Present: Rep. Jennifer Carlson, Chair (R)
Rep. Alice Buckley, Vice Chair (D)
Rep. Lola Sheldon-Galloway, Vice Chair (R)
Rep. Kim Abbott (D)
Rep. Edward Buttrey (R)
Rep. Jodee Etchart (R)
Rep. Donavon Hawk (D)
Rep. Caleb Hinkle (R)
Rep. SJ Howell (D)
Rep. Ron Marshall (R)
Rep. Nelly Nicol (R)
Rep. George Nikolakakos (R)
Rep. Greg Oblander (R)
Rep. Wayne Rusk (R)
Rep. Ed Stafman (D)
Rep. Michael Yakawich (R)
Rep. Zooey Zephyr (D)

Members Excused: Rep. Gregory Frazer (R)
Rep. Amy Regier (R)
Rep. Laura Smith (D)
Rep. Tom Welch (R)

Staff Present: Milly Allen, Research Analyst
Katie Reeves, Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

HB 559 02/17/2023

HB 560 02/17/2023

Executive Action:

HB 45 DO PASS AS AMENDED
HB 207 TO TABLE
HB 317 DO PASS AS AMENDED
HB 446 DO PASS
HB 449 DO PASS
HB 461 DO PASS AS AMENDED
HB 466 TO TABLE
HB 498 TO TABLE
HB 582 DO PASS
HB 230 TO TABLE

HEARING ON HB 559 - License prospective adoptive parents as foster parents

Opening Statement:

15:07:40 Vice Chair Lola Sheldon-Galloway (R), HD 22, opened the hearing on HB 559, License prospective adoptive parents as foster parents.

Proponent Testimony:

None

Opponent Testimony:

None

Informational Witness Testimony:

15:10:34 Nikki Grossberg, Division Administrator, Dept of Health and Human Services

Questions from Committee:

15:11:03 Rep. Edward Buttrey
15:11:33 Nikki Grossberg, DPHHS
15:12:33 Rep. Edward Buttrey
15:12:47 Rep. Lola Sheldon-Galloway-R
15:13:47 Rep. Greg Oblander
15:14:06 Rep. Lola Sheldon-Galloway-R
15:16:15 Chair Jennifer Carlson
15:16:42 Rep. Lola Sheldon-Galloway-R

Closing Statement:

15:16:59 Vice Chair Lola Sheldon-Galloway (R), HD 22, closed the hearing on HB 559.

HEARING ON HB 560 - Revise laws related to adoption

Opening Statement:

15:17:40 Vice Chair Lola Sheldon-Galloway (R), HD 22, opened the hearing on HB 560, Revise laws related to adoption.

Discussion:

15:18:33 Rep. Edward Buttrey

15:18:45 Chair Jennifer Carlson

Proponent Testimony:

None

Opponent Testimony:

15:23:50 Margaret Morgan, St. Johns United, Billings (SJU)

Informational Witness Testimony:

15:25:38 Nikki Grossberg, Division Administrator, DPHHS

Questions from Committee:

15:26:04 Rep. Edward Buttrey

15:26:25 Margaret Morgan, SJU

15:27:57 Rep. Edward Buttrey

15:28:36 Nikki Grossberg, DPHHS

15:29:18 Rep. Greg Oblander

15:30:14 Rep. Lola Sheldon-Galloway-R

15:35:32 Rep. Michael Yakawich

15:36:23 Nikki Grossberg, DPHHS

Closing Statement:

15:41:30 Vice Chair Lola Sheldon-Galloway (R), HD 22, closed the hearing on HB 560.

15:47:49 **Recessed**

16:24:06 **Reconvened**

**EXECUTIVE ACTION ON HB 45 - Provide oversight and standard for community
benefits/charity care**

16:24:41 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 45 DO PASS.**

Discussion:

16:24:54 Rep. Edward Buttrey

16:25:05 **Motion:** Rep. Edward Buttrey moved that **HB 45 BE AMENDED.**

Vote: Motion carried unanimously by voice vote.

16:26:46 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 45 DO PASS AS
AMENDED.**

Discussion:

16:27:00 Rep. Jodee Etchart

Vote: Motion carried unanimously by voice vote.

**EXECUTIVE ACTION ON HB 207 - Revise child abuse and neglect reports and
investigation laws**

16:29:08 **Motion:** Rep. Ron Marshall moved that **HB 207 TO TAKE FROM THE
TABLE.**

Vote: Motion carried 12 - 5 by voice vote with Rep. Abbott, Rep. Buckley,
Rep. Hawk, Rep. Howell, Rep. Zephyr, voting no.

16:30:53 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 207 DO PASS.**

16:30:59 **Motion:** Rep. Ron Marshall moved that **HB 207 BE AMENDED.**

Vote: Motion carried 16 - 5 by roll call vote with Rep. Abbott, Rep. Buckley,
Rep. Howell, Rep. Smith, Rep. Zephyr, voting no.
Rep. Smith, By Proxy

16:33:32 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 207 DO PASS AS
AMENDED.**

Discussion:

16:33:43 Rep. SJ Howell

16:35:05 Rep. Ed Stafman

Vote: Motion failed 11 - 9 by roll call vote with Rep. Buttrey, Rep. Carlson, Rep. Etchart, Rep. Hinkle, Rep. Marshall, Rep. Nicol, Rep. Oblander, Rep. Regier, Rep. Sheldon-Galloway, voting yes.
Rep. Regier, By Proxy

16:37:39 **Motion:** Rep. Edward Buttrey moved that **HB 207 BE TABLED.**

Vote: Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 317 - Provide for the Montana Indian Child Welfare Act

16:38:04 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 317 DO PASS.**

16:38:22 **Motion:** Rep. Kim Abbott moved that **HB 317 BE AMENDED.**

Vote: Motion carried unanimously by voice vote.

16:39:38 **Motion:** Rep. Kim Abbott moved that **HB 317 BE AMENDED.**

Discussion:

16:40:42 Rep. Kim Abbott

Vote: Motion carried unanimously by voice vote.

16:41:14 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 317 BE AMENDED.**

Discussion:

16:42:02 Rep. SJ Howell

Vote: Motion failed 15 - 6 by roll call vote with Rep. Buttrey, Rep. Carlson, Rep. Hinkle, Rep. Marshall, Rep. Regier, Rep. Sheldon-Galloway, voting yes.
Rep. Regier, By Proxy

16:45:10 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 317 DO PASS AS AMENDED.**

Vote: Motion carried 15 - 6 by roll call vote with Rep. Carlson, Rep. Hinkle, Rep. Marshall, Rep. Nicol, Rep. Regier, Rep. Sheldon-Galloway, voting no.
Rep. Regier, By Proxy

EXECUTIVE ACTION ON HB 446 - Revise laws related to privacy in health digital services and applications

16:47:17 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 446 DO PASS.**

Vote: Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 449 - Provide for certified pediatric complex care assistant services

16:48:51 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 449 DO PASS.**

Vote: Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 461 - Revise laws related to reporting of child abuse and neglect

16:49:59 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 461 DO PASS.**

16:50:10 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 461 BE AMENDED.**

Discussion:

16:51:19 Vice Chair Lola Sheldon-Galloway

Vote: Motion carried unanimously by voice vote.

16:52:16 **Motion:** Rep. SJ Howell moved that **HB 461 BE AMENDED.**

Discussion:

16:52:30 Rep. SJ Howell

Vote: Motion carried 20 - 1 by voice vote with Rep. Oblander, voting no.

16:54:22 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 461 DO PASS AS AMENDED.**

Vote: Motion carried 20 - 1 by roll call vote with Rep. Abbott, voting no.

EXECUTIVE ACTION ON HB 466 - Establishing the Montana father inclusion and engagement advisory council

16:56:04 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 466 DO PASS.**

16:56:16 **Substitute Motion:** Rep. Donavon Hawk moved that **HB 466 BE TABLED.**

Vote: Substitute Motion carried 19 - 2 by roll call vote with Rep. Regier, Rep. Sheldon-Galloway, voting no.
Rep. Regier, By Proxy

EXECUTIVE ACTION ON HB 498 - Establish a Menstrual Equity Act

16:58:31 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 498 DO PASS.**

Discussion:

16:59:34 Rep. Laura Smith

Vote: Motion failed 13 - 8 by roll call vote with Rep. Abbott, Rep. Buckley, Rep. Hawk, Rep. Howell, Rep. Smith, Rep. Stafman, Rep. Yakawich, Rep. Zephyr, voting yes.

17:01:37 **Motion:** Rep. Edward Buttrey moved that **HB 498 BE TABLED.**

Vote: Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 582 - Extend sunset date for community health aide program

17:01:59 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 582 DO PASS.**

Vote: Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 230 - Provide continuous eligibility for young children covered by CHIP and Medicaid

17:04:08 **Motion:** Rep. Ed Stafman moved that **HB 230 TO TAKE FROM THE TABLE.**

Vote: Motion carried 13 - 6 by roll call vote with Rep. Buttrey, Rep. Carlson, Rep. Etchart, Rep. Hinkle, Rep. Oblander, Rep. Sheldon-Galloway, voting no.

17:07:01 **Recessed**

17:18:08 **Reconvened**

17:18:43 **Motion:** Rep. Lola Sheldon-Galloway moved that **HB 230 DO PASS.**

Discussion:

17:18:57 Rep. Ed Stafman

17:21:41 Rep. Edward Buttrey

17:24:15 Rep. Ed Stafman

17:26:37 Chair Jennifer Carlson

Vote: Motion failed 11 - 10 by roll call vote with Rep. Abbott, Rep. Buckley, Rep. Etchart, Rep. Frazer, Rep. Hawk, Rep. Howell, Rep. Smith, Rep. Stafman, Rep. Yakawich, Rep. Zephyr, voting yes.
Rep. Frazer, By Proxy

17:25:26 **Motion:** Chair Jennifer Carlson moved that **HB 230 BE TABLED.**

Vote: Motion carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 17:30:19

Katie Reeves, Secretary

Additional Documents: [EXHIBIT\(230221HUhHaad\)](#)

MINUTES
MONTANA SENATE
68th LEGISLATURE - REGULAR SESSION
COMMITTEE ON (S) PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: Chair Tom McGillvray-R, on March 22, 2023 at 3:06 PM, in 317

ROLL CALL

Members Present: Sen. Tom McGillvray, Chair (R)
Sen. Dennis Lenz, Vice Chair (R)
Sen. Becky Beard (R)
Sen. Steve Hinebaugh (R)
Sen. Susan Webber (D)

Members Excused: Sen. Carl Glimm (R)
Sen. Jen Gross (D)
Sen. Kathy Kelker (D)
Sen. Brad Molnar (R)

Staff Present: Trudy Burke, Secretary
Madelyn Krezowski, Attorney

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

HB 312 03/14/2023

HB 313 03/14/2023

HB 317 03/21/2023

Executive Action:

HEARING ON HB 313 - Provide for independent practice of physician assistants

Opening Statement:

15:08:27 Rep. Jodee Etchart (R), HD 48, opened the hearing on HB 313, Provide for independent practice of physician assistants.

Discussion:

15:09:03 Sen. Jen Gross joined the meeting.

15:09:06 Sen. Brad Molnar joined the meeting.

Proponent Testimony:

15:12:13 Rep. Jonathan Windy Boy, House District 32

15:12:56 Rachel Green, Governor's Office

15:14:00 Megan Zawacki, Montana Academy of Physicians Assistants (MAPA)

15:17:42 Jennifer Hensley, Montana Academy of Physicians Assistants (MAPA)

15:19:25 Sen. Carl Glimm joined the meeting.

15:21:17 Ta'jin Perez, Western Native Voice

15:21:53 Henry Kriegel, Americans for Prosperity

15:23:39 Kali Wicks, Blue Cross Blue Shield Montana

15:24:20 Bruce Spencer, Mountain Health Co-op

15:24:49 Margaret Morgan, Montana Association of Nurse Anesthetists

15:25:06 Keegan Medrano, American Civil Liberties Union- Montana

15:25:29 Scott Boulanger, Montana Medical Association

15:25:33 Lance Four Star, Montana American Indian Caucus

[EXHIBIT\(230322PHSa1\)](#)

Opponent Testimony:

15:27:16 Nathan Allen, Montana Chapter of the American College of Emergency Physicians

Informational Witness Testimony:

15:27:54 Eric Strauss, Department of Labor and Industry (DLI)

Questions from Committee:

15:28:22 Sen. Susan Webber

15:28:50 Rep. Jodee Etchart-R

Closing Statement:

15:29:30 Rep. Jodee Etchart (R), HD 48, closed the hearing on HB 313.

HEARING ON HB 312 - Provide for rural emergency hospital designation

Opening Statement:

15:29:43 Rep. Jodee Etchart (R), HD 48, opened the hearing on HB 312, Provide for rural emergency hospital designation.

Proponent Testimony:

15:31:23 Duane Preshinger, Montana Hospital Association (MHA)

15:34:45 Ta'jin Perez, Western Native Voice

15:35:18 Jasmine Krotkov, Montana Farmers Union

Opponent Testimony:

None

Informational Witness Testimony:

15:36:34 Leslie Howe, Department of Public Health and Human Services (DPHHS) and the Office of the Inspector General

15:36:59 Jack King, Montana Health Research and Education Foundation of the Montana Hospital Association (MHA)

Questions from Committee:

15:37:45 Sen. Susan Webber

15:38:50 Jack King, MHA

15:40:12 Sen. Becky Beard

15:41:40 Duane Preshinger, MHA

15:42:00 Vice Chair Dennis Lenz

15:45:23 Duane Preshinger, MHA

15:45:54 Chair Tom McGillvray

15:45:59 Duane Preshinger, MHA

15:46:30 Vice Chair Dennis Lenz

15:47:06 Duane Preshinger, MHA

15:47:27 Sen. Carl Glimm

15:48:34 Duane Preshinger, MHA

15:49:06 Sen. Carl Glimm

15:51:27 Duane Preshinger, MHA

15:52:36 Vice Chair Dennis Lenz

15:53:11 Duane Preshinger, MHA

15:53:37 Sen. Becky Beard

15:54:09 Duane Preshinger, MHA

15:54:52 Chair Tom McGillvray

15:55:37 Duane Preshinger, MHA

Closing Statement:

15:56:13 Rep. Jodee Etchart (R), HD 48, closed the hearing on HB 312.

HEARING ON HB 317 - Provide for the Montana Indian Child Welfare Act

Opening Statement:

15:56:56 Rep. Jonathan Windy Boy (D), HD 32, opened the hearing on HB 317, Provide for the Montana Indian Child Welfare Act.

Proponent Testimony:

16:00:05 Bryce Kirk, Fort Peck Tribal Council

16:01:56 Sen. Jen Gross left the meeting.

16:03:38 Lance Four Star, Montana American Indian Caucus
[EXHIBIT\(230322PHSa2\)](#)

16:05:16 Patrick Yawakie, Blackfeet Tribe
[EXHIBIT\(230322PHSa3\)](#)

16:07:09 Sean Conroe, Ability Montana and Court Appointed Special Advocates (CASA) of Lewis and Clark and Broadwater Counties

16:07:40 Kelly Driscoll, self

16:11:24 Brooke Baracker-Taylor, self
[EXHIBIT\(230322PHSa4\)](#)

16:15:05 Aubrey Henderson, self

16:16:28 Joan Sure Chief, Indian People's Action
[EXHIBIT\(230322PHSa5\)](#)

16:19:41 Quincy Bjornberg, self

16:21:21 Sharen Kicking Woman, American Civil Liberties Union- Montana

16:24:37 Keegan Medrano, American Civil Liberties Union- Montana

16:27:55 Alyssa Kelly, American Civil Liberties Union- Montana

16:30:44 Ta' jin Perez, Western Native Voice

16:32:03 Jana Peterson, self

16:33:58 Fred Fisher, self
[EXHIBIT\(230322PHSa6\)](#)

16:37:21 Kathy Deserly, self

16:41:31 Danielle Vazquez, Montana Women Vote

16:42:27 Leo Thompson, self

16:44:07 Jade Bahr, Montana Budget and Policy Center
[EXHIBIT\(230322PHSa7\)](#)

16:45:27 Roberta Duckhead Kittson Nyomo, self

16:51:26 Robin Turner, Montana Coalition Against Domestic and Sexual Violence
and The Womens Foundation of Montana

16:52:15 Shawn Reagor, Montana Human Rights Network

16:53:27 Jessica Crist, self

16:54:13 Brooke Swaney, self

16:55:20 Hillary-Anne Crosby, self

16:55:44 Heidi He Does It, self

16:56:54 Lilian Alvernaz, Indian Law Section

16:57:58 Yolanda Page, Confederated Salish Kootenai Tribes

16:58:45 Carrie Spotted Bear, Zero to Five Montana

16:59:52 Lisa Woodward, self

Opponent Testimony:

None

Informational Witness Testimony:

17:02:16 Nikki Grossberg, Department of Public Health and Human Services
(DPHHS)

17:02:42 Eldena Bear Don't Walk, Office of the Public Defender

Questions from Committee:

17:04:00 Sen. Susan Webber

17:10:03 Brooke Baracker-Taylor

17:11:12 Sen. Susan Webber

17:11:28 Kelly Driscoll

17:13:20 Sen. Becky Beard

17:13:52 Rep. Jonathan Windy Boy-D

17:16:44 Vice Chair Dennis Lenz

17:21:44	Rep. Jonathan Windy Boy-D
17:23:01	Vice Chair Dennis Lenz
17:29:04	Kelly Driscoll
17:29:33	Vice Chair Dennis Lenz
17:30:32	Chair Tom McGillvray
17:35:46	Rep. Jonathan Windy Boy-D
17:36:06	Kathy Deserly
17:37:37	Chair Tom McGillvray
17:38:17	Kathy Deserly
17:38:37	Kelly Driscoll
17:39:52	Chair Tom McGillvray
17:40:02	Kelly Driscoll
17:40:22	Vice Chair Dennis Lenz
17:40:42	Kelly Driscoll

Closing Statement:

17:41:39	Rep. Jonathan Windy Boy (D), HD 32, closed the hearing on HB 317.
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ADJOURNMENT

Adjournment: 17:49:21

Trudy Burke, Secretary

Additional Documents: [EXHIBIT\(230322PHSaad\)](#)



2023 Session

Senate Additional Documents

May include the following:

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- All Public Testimony document(s) may or may not be scanned, but will be on file at the Montana Historical Society for your research.
- Any other type of documents such as:
@ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

**BUSINESS REPORT
MONTANA SENATE
REGULAR**

(S) Public Health, Welfare and Safety

Date: 03/22/2023

Time: 3:09 PM

Place: Capitol

Room: 317

BILLS and RESOLUTIONS HEARD:

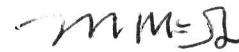
HB 312 Provide for rural emergency hospital designation - Rep. Jodee Etchart

HB 313 Provide for independent practice of physician assistants - Rep. Jodee Etchart

HB 317 Provide for the Montana Indian Child Welfare Act - Rep. Jonathan Windy Boy

EXECUTIVE ACTION TAKEN:

Comments:



Sen. Tom McGillvray-R, Chair

Senate

Roll Call

(S) Public Health, Welfare and Safety

DATE: 03/22/2023

TIME: 3:00 PM

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/EXCUSED</u>
Lenz, Dennis	X	
Beard, Becky	X	
Glimm, Carl		X
Gross, Jen		X
Hinebauch, Steve	X	
Kelker, Kathy		X
Molnar, Brad		X
Webber, Susan	X	
McGillvray, Tom	X	

VISITORS REGISTER

MONTANA SENATE

PUBLIC HEALTH WELFARE AND SAFETY

HB 313 Provide for independent practice of physician assistants - Representative Jodee Etchart

NAME	REPRESENTING	Support	Oppose	Informat'l
Margaret Morgan	MT Assoc Nurse Practitioners	X		
Ben Spier	AMHC	X		
Jennifer Jusky	MTAPA	X		
Rachel Brun	GOV	X		
Kali Wick	BCBSMT	X		
Henry Kiesel	ASP-MT	X		
Scott Boulanger	MMA	X		
Eric Strauss	DLI			X
Megan Lawacko	MTAPA	X		
Tajim Perez	Western Name Voice	X		
Jane Motzko	MAIC	X		

VISITORS REGISTER
MONTANA SENATE
PUBLIC HEALTH WELFARE AND SAFETY
**HB 312 Provide for rural emergency hospital designation -
Representative Jodee Etchart**

NAME	REPRESENTING	Support	Oppose	Informat'l
Duane Prashingier	MHA	X		
Nick King	MHA			X
Leslie Howe	DPHHS			X
Tajim Perez	Western Native Voice	X		
Jasmine Kroger	MT Farmers Union	X		
Danny Kennedy	Western Native Voice	X		

Please leave prepared testimony with Committee Secretary. Witness Statement
Forms are available if you prefer to submit written testimony.

VISITORS REGISTER

MONTANA SENATE

PUBLIC HEALTH WELFARE AND SAFETY

HB 317 Provide for the Montana Indian Child Welfare Act - Representative
Jonathan Windy Boy

NAME	REPRESENTING	Support	Oppose	Informat'l
Roberta D. K. Pegomes	myself	✓		
Lanette Deserhy	myself	✓		
Katlyn Deserhy	Myself	✓		
Kelly Driscoll	self	✓		
Allyssa Kelley	ACW MT	✓		
Robin Turner	McAdams WFM	✓		
Jana Peterson	myself	✓		
James Whit Jants	MAIC	X		
Patrick YAWAKIE	Blackfeet Tribe	X		
Bryce Kirk	Ft. Belk tribes Council	X		
Quincy Borneberg	myself	X		
LISA Esquivel	Self	X		

Please leave prepared testimony with Committee Secretary. Witness Statement
Forms are available if you prefer to submit written testimony.

VISITORS REGISTER

MONTANA SENATE

PUBLIC HEALTH WELFARE AND SAFETY

Date 3-22-2023Bill/Sponsor ^{HB} 317 - Windy BoyTitle Provide for Mt Indian Child Welfare Act

NAME	REPRESENTING	Support	Oppose	Informat'l
Jocelyn E. Olsen	self	X		
Debra Henderson	Self	X		
Kegan Medrano	ACLU-MT	X		
Brooke Baracker-Taylor	Self	X		
Leo Thompson	Self	X		
John Spencer	SLC Bar	X		
Sharen Kickingwoman	ACLU-MT	X		
Nika Grossky	CESD			✓
Danielle Vazquez	MT Women Vote	X		
Tajim Perez	Western Native Vote	X		
Joan Surechiet	Indian Peoples Action	X		
Sean Conroe	CASA & LCBC/Ability, MT	X		

Please leave prepared testimony with Committee Secretary. Witness Statement
Forms are available if you prefer to submit written testimony.

VISITORS REGISTER

MONTANA SENATE

PUBLIC HEALTH WELFARE AND SAFETY

Date 3/22/23Bill/Sponsor Windy BoyTitle HB 317

NAME	REPRESENTING	Support	Oppose	Informat'l
Jade Bahr	MBPC	X		
Merwin Lewis	Self	X		
Rep. Juan Sney	HD 42	X		
FRED FISHER	CITIZEN	X		

Please leave prepared testimony with Committee Secretary. Witness Statement
Forms are available if you prefer to submit written testimony.

Date	Committee	H/S	Bill #	Position	Requester Name	Location
3/22/23	PHS	HB	317	Proponent	Jessica Crist	Great Falls, Montana
3/22/23	PHS	HB	317	Proponent	Brooke Swaney	Polson, MT
3/22/23	PHS	HB	317	Proponent	Hillary-Anne Crosby	Bozeman, MT
3/22/23	PHS	HB	317	Proponent	Heidi He Does It	Red Lodge, MT
3/22/23	PHS	HB	317	Proponent	Lillian Alvernaz	Harlem, MT
3/22/23	PHS	HB	317	Proponent	Yolanda Page	Pablo, Montana
3/22/23	PHS	HB	317	Proponent	Janis (Jan) L Strout,	BOZEMAN, MT
3/22/23	PHS	HB	317	Proponent	Carrie R Spotted Bear	Browning, Montana
3/22/23	PHS	HB	317	Proponent	Tracy "Ching" King	Fort Belknap, MT
3/22/23	PHS	HB	317	Proponent	Lisa Woodward	Great Falls, MT
3/22/23	PHS	HB	317	Informational Witness	Eldena Bear Don't Walk	Polson, MT
3/22/23	PHS	HB	313	Opponent	Nathan Allen	Billings MT



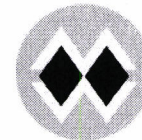
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MOUNTAIN WEST SOCIETY OF
PLASTIC SURGEONS

March 15, 2023

The Honorable Tom McGillvray, *Chair*
The Honorable Kathy Kelker, *Vice Chair*
The Honorable Dennis Lenz, *Vice Chair*
Senate Public Health, Welfare & Safety
1301 E. 6th Ave
Helena, MT 59601

Additional Documents

SENATE: Public Health

Date: 3-22-2023

Bill No. HB 313

RE: Oppose House Bill 313

Dear Chair McGillvray and Vice Chairs Kelker and Lenz:

On behalf of the Mountain West Society of Plastic Surgeons (MWSPS) and the American Society of Plastic Surgeons (ASPS), we are writing in opposition to House Bill 313. ASPS is the largest association of plastic surgeons in the world, representing more than 8,000 members and 92 percent of all board-certified plastic surgeons in the United States – including 27 board-certified plastic surgeons in Montana. Our mission is to advance quality care for plastic surgery patients and promote public policy that protects patient safety.

We must oppose H.B. 313, as it is authorizing physician assistants (PAs) to practice independently – representing a dangerous expansion of their role in patient care. Authorizing PAs to independently practice represents a dangerous expansion of their role in patient care. To then allow a PA who has independent practice to act as the collaborating authority for a PA without independent authority is reckless. There has been *no* demonstration that PAs can safely practice independently. Only after evidence that they can manage their own new responsibilities should the state even begin considering their ability to act as the collaborating provider for other PAs. This effort to significantly expand their scope of practice is, quite frankly, irresponsible. PAs do not receive sufficient medical training to provide them with the clinical expertise to practice outside of a collaborative agreement. Their training is in no way equivalent to that of physicians, who offer essential diagnostic and medical expertise to patients. Requiring a PA to have two years of clinical experience prior to practicing independently is an arbitrary benchmark. Ultimately, though, it does not matter what number of “experience” hours a PA has. Nothing can replace the foundational medical knowledge and decision-making skill possessed by physicians because of their residency training.

Most PAs receive their bachelor’s degree in science, followed by a three-year master’s degree program. While the master’s degree and advanced clinical experience provide PAs with an advanced education in comparison to other mid-level practitioners, this education will never replace the education gained through medical school. In contrast, all primary care and specialty physicians receive a bachelor’s degree, followed by a four-year degree from an accredited medical school. Medical students spend nearly 9,000 hours in lectures, clinical study, lab, and direct patient care.

Comprehensive physician training continues through post-graduate medical education, where all physicians are trained in accredited residency programs and receive at least three additional years of training before becoming licensed and board certified. Ultimately, physicians will train for eight to sixteen

years, as much as four-times-as-long as a PA. Only this depth and duration of training prepares a provider to safely execute all the responsibilities the bill seeks to grant to PAs.

Ultimately, we believe that giving PAs independent practice authority will undermine the physician-centered, team-based healthcare delivery model, an established norm resulting from the extensive education of the lead physician. The lead physician plays a critical role in determining whether the patient is a candidate for medical services, identifying potential complications before they arise, and triaging complications that may occur. The erosion of physician-centered, team-based healthcare will, in turn, negatively impact patient quality outcomes. Instead, PAs should continue to practice in collaboration with a physician who specializes in the medical care offered. This allows for seamless consultation in case the PA needs advice regarding care, more effective identification when referring to a specialist, and faster admission to a hospital, if needed.

ASPS recognizes that the ultimate goal of this proposal is to expand access to primary care services, especially in areas that have difficulty attracting physicians. However, rigorous studies conducted by the American Medical Association¹ have consistently shown that expanding PA scope of practice does not increase access to care in underserved areas. In fact, PAs with expanded practice parameters tend to practice in the exact areas that are already served by established physician populations. Therefore, H.B. 313 is founded on the flawed premise that it will increase access to primary care services for areas in need. Unfortunately, this is simply not true and will not address this warranted concern.

As surgeons, we encourage you to uphold the high level of patient care that has been established and permit licensed PAs to only practice under the supervision of physicians who meet appropriate education, training, and professional standards to practice medicine in Montana.

Thank you for consideration of our comments. Please do not hesitate to contact Gabrielle Coapstick, ASPS's State Affairs Manager, at gkoenig@plasticsurgery.org or (847) 228-3331 with any questions or concerns.

Sincerely,



Gregory Greco, DO, FACS
President, American Society of Plastic Surgeons



Alanna Rebecca, MD
President, Mountain West Society of Plastic Surgeons

cc: Members, Senate Public Health, Welfare & Safety

¹ The AMA Health Workforce Mapper, 1995-2020. <https://www.ama-assn.org/about/health-workforce-mapper>.

Additional Documents

SENATE: Public Health

Date: 3-22-2023
Bill No. HB 317

Bill: HB-317
Committee: (S) Public Health, Welfare and Safety
Position: Proponent
Representation: No
Representation Org: N/A
Full Name: Lisa Woodward
Zoom Request: Yes
City/State: Great Falls, MT

March 21, 2023

Hello Chairperson and member of the Committee,

Thank you for your service in our legislature and for allowing me to testify today. Families are the bedrock of resilience and support for youth, adults, and communities and often buffer against disparities in health and social conditions that ethnic minorities tend to experience (Burnette, 2018; Burnette & Figley, 2016).

Research has shown, and continues to show, that the trauma of removal of children from their families causes more harm to children than allowing children to remain at home with their parents who have issues, even without governmental services in place. The legislatures awareness of this large body of research is evidenced by House Bill 513 which would require the state to consider the harm of removal in child abuse and neglect cases before removing a child from the home in any case, regardless of the political status of the childs family.

While Native families in Montana remain resilient despite the historic oppression that has occurred for centuries in this state, legal safeguards must remain in place to protect the families and the Tribes precious childrens connection not only to their loved ones but to their kinship systems and their places which are sacred to their people in a way that western court systems and foster care providers cannot understand without the help of experts and the guidance of the tribe when they know it is time to intervene. Historical oppression in Montana has included educational discrimination, environmental injustice, land dispossession, forced migration, chronic poverty, and other forms of marginalization that are understood to be intricately connected to the health inequities that persist among our tribal populations due to intergenerational loss and trauma that continues to go unacknowledged and inappropriately blamed. When we see resolutions pass through these very walls that are discriminatory and maybe even heartless it is no wonder that we have so many people here today that have it in our hearts to want to be here to protect our children. Some of us have stories from our own families that we dont want to share. Resolutions like those might make us feel unsafe to do so, but I like to feel like a Montana will exist where Native children wont have to feel unsafe in our capital someday. That is why we are here today. Please vote yes for todays Native children and for tomorrows Native children, too. Thank you so much for your time today and for allowing me to Testify.

Sincerely,

Lisa Woodward

Bill: HB-317

Committee: (S) Public Health, Welfare and Safety

Position: Proponent

Representation: Yes

Representation Org: The Confederated Salish and Kootenai Tribes

Full Name: Yolanda Page

Zoom Request: Yes

City/State: Pablo, Montana

Good afternoon Chairman McGillvray and members of the Committee,

My name is Yolanda Page, spelled P-A-G-E, and I am an attorney for the Confederated Salish and Kootenai Tribes. The CSKT supports HB 317.

Much of my work for CSKT is working to insure our CSKT children, families and Tribes are protected under the Indian Child Welfare Act during State Dependency Case throughout Montana and in the United States. Adding this type of legislation to the State code won't make any substantive changes to how the current Montana process looks regarding Indian children dependency proceedings. HB 317 simply reinforces the Federal Indian Child Welfare Act, which has been called the Gold Standard for dependency/adoption practices. This bill would create levels of protection at the State level to keep families together by requiring more active efforts, uniformity in courts throughout the state and keep Indian/Native children connected to their Tribal culture. Court proceedings would be less adversarial because of the uniformity and help keep productive communication moving between involved parties.

This legislation will further help to reduce the impact of higher removal rates of Indian/Native Children from their families and communities than other children in the foster care system. Additionally, this legislation would help mitigate generational trauma and help to increase resiliency in Indian children and youth because they will still have their Tribal and cultural connections.

HB 317 should be looked at as a way that Montana can implement best practices and uniformity in the system so we can have healthy Montana Native children, families, and communities.

For these reasons, the CSKT urges you to support HB 317. Thank you.

**RESOLUTION
OF THE GOVERNING BODY OF
THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, MONTANA**

BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES TO SUPPORT THE STATE INDIAN CHILD WELFARE ACT LEGISLATION.

WHEREAS, the Tribal Council is the duly elected body representing the Confederated Salish and Kootenai Tribes of the Flathead Reservation of Montana and is empowered to act on behalf of the Tribes. All actions shall be adherent to provisions set forth in the Constitution and By-Laws.

WHEREAS, the Montana Legislature wishes to enact a state version of the Indian Child Welfare Act (ICWA), which was enacted in 1978 to stop the widespread removal of Indian children from their families, homes, and tribal communities; and

WHEREAS, the Tribal Council believes it is in the best interest of the Confederated Salish and Kootenai Tribes' children to be protected from harm and to prevent the unnecessary trauma that occurs when children are removed from their family, culture, and community; and

WHEREAS, the Tribal Council acknowledges that tribes and tribal communities, state governments, members of Congress, national and legal organizations, and thousands of Native American individuals have supported ICWA as an essential and effective policy that protects the best interests of Native American children; and

NOW, THEREFORE IT BE RESOLVED, the Tribal Council supports the legislation of the Montana Indian Child Welfare Act, in order to preserve for us and our descendants the inherent sovereign rights of our nations, to preserve cultural values, and to promote stable placements for the Confederated Salish and Kootenai Tribes' children in loving, permanent homes, connected to their families and our culture.

BE IT FINALLY RESOLVED, that the Tribal Council is hereby delegated the authority and responsibility to sign all documents necessary to effect this action.

CERTIFICATION

The Tribal Council duly adopted the foregoing Resolution on January 3, 2023, by a vote of 9 for, 0 opposed, and 1 not voting, pursuant to authority vested in it by Article VI, Section 1 (l), (q), and (k) of the Tribes' Constitution and Bylaws, said Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.



Chairman, Tribal Council

ATTEST:



Tribal Secretary

Chante Japp
Chante.japp16@gmail.com
717 1st Ave. N.
Wolf Point MT 59201

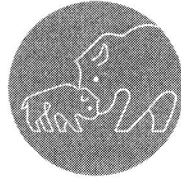
My name is Chante' Japp I am 34 yrs old and I live in Wolf Point Montana where majority of my family resides on the Fort Peck Indian Reservation. I am a descendant from the Sioux tribe from Wood Mountain in Canada. The middle child of seven children and unfortunately we all either grew up and aged out of foster care or were adopted by complete strangers. I on the other hand had the experience of aging out of foster care once I turned eighteen and graduated high school.

My experience in growing up in the system was encountered with a lot of moving around and my siblings and I being split apart. From what I can remember I was placed in over fifteen homes with a few of those being kinship placements on the Fort Peck Indian Reservation when I got older. One thing that was hard for me and my experience was every home that I went to that was not kinship (which was most of them) each had a different religion or spirituality. I was forced to participate and believe in their religions each time. One home would be Catholics the next Mormon and so on. This was one of the hardest parts about being in the foster system and not being able to identify with MY identity and follow and believe in MY people's way of life. The amazing part about being Native American is that tribe's may have different ways of doing ceremonies etc, is that we all believe in the same way. We all connect in the same way and show respect in the same way.

It wasn't until I was a teenager that I was brought back to the reservation and placed in a home where the parents were Native American. I felt like I belonged, connected and started to truly find myself. I wasn't just the dark haired girl with brownish skin anymore. I was a child that was finally among people that looked like me. I wasn't forced to attend church or participate in religious events anymore. I was being taught a way of life that finally made sense and brought me closer to who I was, to who I am. I am very thankful that the Indian Child Welfare Act was able to be implemented in my case and able to bring me home.

It is crucial for Montana to focus on and pass the HB317 in regards to the Indian Child Welfare Act for the purpose of allowing Native American children to be who they are supposed to be. To allow them the right to identify and learn their Tribe's way of life. Taking them away from their homeland or their people would only contribute to the saying "Kill the Indian, Save the Man." A saying that is imprinted in our ancestors stories. I would like to thank the Montana Legislator for your time and consideration in this matter.

Chante Japp



ZEROTOFIVE
MONTANA

March 21, 2023

HB 317 - Indian Child Welfare Act

Chair McGillvray and members of the Senate Public Health, Welfare & Safety Committee,

On behalf of Zero to Five Montana, I am writing today in support of HB 317. This bill, like the Indian Child Welfare Act (ICWA) established in 1978, recognizes the sovereignty of tribal governments and their unique ability to make decisions in the best interest of their citizens. ICWA strives to protect Native American children from continued forced removal from their families, tribes, and tribal culture. Native families have a right to stay together, care for their children, and preserve tribal culture by ensuring access to their cultural identity, language, and heritage.

Montana's American Indian children continue to experience disproportionate removal and foster case placement rates within the state. While American Indian children made up 9.4% of the Montana population in 2020, they represented 33.2% of children in the foster care system, 24.5% of children entering the foster care system, and 31.3% of children waiting for adoption. HB 317 is essential for supporting Native children and families in our state, and would work to lessen the disparities outlined above. The bill is a clear message of respect towards the tribal nations within the state of Montana by recognizing the importance of ICWA and supporting the sovereignty of tribal nations.

American Indian children make up almost 10 % of the under 18 population. A child's cultural identity and connection to their community are critical protective factors that can mitigate later challenges in life, such as substance use, mental illness, and involvement in the criminal justice system. As a state, we need to ensure native children do not endure any more trauma similar to the boarding school events in the past that happened across the country. Indian children are fighting to break the cycle of trauma and MT ICWA supports those efforts by looking to prevent that loss of culture and identity in children.

We urge the members of the committee to support HB 317 and solidify the state's commitment to doing what is best for American Indian children in our state. Thank you for your consideration and please feel free to contact me at caitlinj@zerotofive.org if you have any questions.

Caitlin Jensen
Executive Director, Zero to Five Montana

March 21, 2023

HB 317: Revise laws related to Indian Child Welfare Act

Sponsor: Jonathan Windy Boy (D) HD 32

Mr. Chair, Members of the Committee, my name is Carrie Spotted Bear [S-P-O-T-T-E-D B-E-A-R] and I'm the Tribal Policy Coordinator of Zero to Five Montana . I am an enrolled member of the Blackfeet tribe. I am here today to voice our support for **HB 317** and would like to thank the sponsor, Rep Windy Boy for putting a bill forward that protects Montana tribal children and families.

HB 317 establishes the protections and rights of the Indian Child Welfare Act (ICWA) at a state level. To protect children it is important to have a clear understanding of ICWA. This bill ensures placement priorities are based on the child's unique cultural, political, social, and spiritual relationship with their tribe and tribal community. Ensuring a child's social emotional growth and development through his/her tribal culture is proven to prevent future challenges in life. It is vital to our future as native people to protect all our children and help them know their identity. HB 317 is a bill that ensures the protection of Montana native children across the country.

In closing, thank you Mr Chair, and members of the committee for your time today. We request a do pass for this bill.

Chair and members of the Senate Public Health, Welfare and Safety Committee,

I am writing to urge you to vote yes on HB 371, which will create the Montana Indian Child Welfare Act. This legislation reflects the gold standard policies currently in place at the federal level. By supporting HB 317 you will protect the best interests of American Indian children by preventing unwarranted removal of children from their homes and keeping children connected to their families and tribal culture when possible. This bill supports Montana children and families and I urge you to vote yes.

Thank you for your consideration.

Sincerely,

Laurel Hesse
Missoula, MT

March 21, 2023

Hello Chairperson and member of the Committee,

Thank you for your service in our legislature and for allowing me to testify today.

"Families are the bedrock of resilience and support for youth, adults, and communities and often buffer against disparities in health and social conditions that ethnic minorities tend to experience (Burnette, 2018; Burnette & Figley, 2016)." Research has shown, and continues to show, that the trauma of removal of children from their families causes more harm to children than allowing children to remain at home with their parents who have issues, even without governmental services in place. The legislature's awareness of this large body of research is evidenced by House Bill 513 which would require the state to consider the harm of removal in child abuse and neglect cases before removing a child from the home in any case, regardless of the political status of the child's family.

While Native families in Montana remain resilient despite the historic oppression that has occurred for centuries in this state, legal safeguards must remain in place to protect the families and the Tribe's precious children's connection not only to their loved ones but to their kinship systems and their places which are sacred to their people in a way that western court systems and foster care providers cannot understand without the help of experts and the guidance of the tribe when they know it is time to intervene. Historical oppression in Montana has included educational discrimination, environmental injustice, land dispossession, forced migration, chronic poverty, and other forms of marginalization that are understood to be intricately connected to the health inequities that persist among our tribal populations due to intergenerational loss and trauma that continues to go unacknowledged and inappropriately blamed. When we see resolutions pass through these very walls that are discriminatory and maybe even heartless it is no wonder that we have so many people here today that have it in our hearts to want to be here to protect our children. Some of us have stories from our own families that we don't want to share. Resolutions like those might make us feel unsafe to do so, but I like to feel like a Montana will exist where Native children won't have to feel unsafe in our capital someday. That is why we are here today. Please vote yes for today's Native children and for tomorrow's Native children, too. Thank you so much for your time today and for allowing me to Testify.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa Woodward', written over the printed name.

Lisa Woodward.

Bill: HB-317
Committee: (S) Public Health, Welfare and Safety
Position: Proponent
Representation: No
Representation Org: N/A
Full Name: Alice Ebi
Zoom Request: No
City/State: Great Falls, MT

I support HB 317. This act is necessary because of the current threat to the federal ICWA in the courts. By creating our own ICWA in Montana we can

Protect the more than 1,200 American Indian children in foster care across the state. (In 2020, American Indian children made up 9% of the child population but 35% of the children in foster care.)

Promote uniformity across judicial districts.

Codify best practices and updated (2016) federal regulations from the BIA. Considering the ongoing disparities in Montanas foster care system, the protections guaranteed by Montana ICWA are crucial as the state works to lessen these disparities.

Furthermore, Montana ICWA works to repair past harms to tribal communities enacted by the state and federal governments through boarding schools and the Indian adoption project. Through termination and forced assimilation policies, Indigenous families were targeted in an effort to weaken tribal nations and their inherent sovereignty. We still need to empower tribes to protect their people today. Please vote YES on HB 317.

Bill: HB-317
Committee: (S) Public Health, Welfare and Safety
Position: Proponent
Representation: No
Representation Org: N/A
Full Name: Aubrey Henderson
Zoom Request: No
City/State: Box Elder, MT

Good Afternoon chairperson and members of the committee, my name is Aubrey Henderson.

I am from the Chippewa Cree Tribe, Rocky Boy Reservation. I am the ICWA case manager for the Chippewa Cree Social Services. As a tribal member and ICWA case manager, I strongly support the passage of Montana ICWA. The purpose of ICWA is to protect the best interest of Indian Children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children and placement of such children in homes which will reflect the unique values of Indian culture. Adopting Montana ICWA will not only promote the best interest of our Indian children but will continue to foster positive relations with the State. I have seen the positive impacts of ICWA in how it protects Indian children and preserves tribal families.

Our Indian children are strong and resilient. If ICWA is taken away from our Indian children, they will lose their ties to the tribe and sense of identity. I have seen an increased positivity in our Indian children by remaining close to their cultural ties, families, and other relations. Montana ICWA will ensure these cultural ties and family relations remain intact so that our Indian children will have an identity to embrace.

Thank you for allowing me to testify today.

Bill: HB-317
Committee: (S) Public Health, Welfare and Safety
Position: Proponent
Representation: No
Representation Org: N/A
Full Name: Cherilyn DeVries
Zoom Request: No
City/State: Kalispell, Montana

Dear members of the Senate Public Health, Welfare, and Safety Committee,

I urge you to vote in support of HB 317, which has broad support from child welfare professionals in our state.

During my time in Montana, I have been gaining more understanding about the destructive impacts of Indian boarding schools, federal and state policies, and activity by religious groups that encouraged practices that ripped Indigenous children from their families, cultures, and communities and placed them in situations where they were cruelly abused. Please honor and act on the powerful testimony that sovereign Indigenous people across Montana have given today.

Unfortunately, we know that prejudices against Indigenous people that were in place more hundreds of years ago are still active today. HB 317 helps us work against these destructive systems and ideas to make sure that Indigenous parents, extended family members, and Tribal nations have every opportunity to nurture children within their culture. It may be painful to recall the past but let us acknowledge the harm done and support better policies by passing HB 317.

Bill: HB-317

Committee: (S) Public Health, Welfare and Safety

Position: Proponent

Representation: Yes

Representation Org: Montana Chapter, National Organization for Women

Full Name: Janis (Jan) L Strout,

Zoom Request: Yes

City/State: BOZEMAN, MT

Dear Committee Chair and Members of the House Public Health, welfare and Safety Committee,

Good afternoon.

My name is Jan Strout, pronouns she/hers, and I live in Bozeman. I am writing on behalf of our hundreds of members across the state as President of the Montana Chapter of the National Organization for Women (or MT NOW) in strong support of HB 317. One of our major Priority issues is to end violence against women, children and Missing and Murdered Indigenous Peoples by protecting children and parents from all forms of violence and abuse.

HB 317, "Provide for the Montana Indian Child Welfare Act" or MICWA, is incredibly important bill to provide protections for the more than 1,200 American Indian children in foster care across the state. This fall, the U.S. Supreme Court will rule on the "Brackeen v. Haaland" case that challenges whether the federal ICWA is constitutional. If the Supreme Court overturns ICWA, protections in place for decades will be lost, and disparities like higher rates in the foster care system and increasing suicides for American Indian children may worsen. While the Supreme Court is considering challenges to ICWA at the federal level, Montana has an opportunity to act and protect Native children in our state by passing a state ICWA.

We are very aware of the real and more complete history of the dangerous and victimized treatment to Montana's Native American children through their enforced removals to Boarding Schools, adoptions by non-native parents, easy child custody removal policies and more. These removals have undermined Indigenous children's connections to their culture, family, pride, self-determination and hope for a positive future. That's why related Indigenous Justice Bills such as strengthening Indian Education for All and creating a statewide Indigenous Peoples' Day are so important and intertwined to advance Native American children's safety and to affirm Indigenous sovereignty in Montana.

Montana NOW urges your powerful DO PASS for HB 317.

Thank you for your consideration.

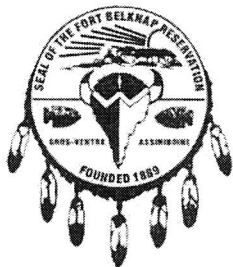
Bill: HB-317
Committee: (S) Public Health, Welfare and Safety
Position: Proponent
Representation: No
Representation Org: N/A
Full Name: Christopher Coburn
Zoom Request: No
City/State: Bozeman, MT

This is such an important bill to keep Montana families intact. Please vote in support!

Fort Belknap Indian Community

Fort Belknap Agency
656 Agency Main Street
Harlem, Montana 59526-9455
PH: (406) 353-2205
FAX: Council - (406) 353-4541
FAX: Departments - (406) 353-2797

Fort Belknap Indian Community
(Tribal Govt.)
Fort Belknap Indian Community
(Elected to administer the affairs of the community and
to represent the Assiniboine and the Gros Ventre
Tribes of the Fort Belknap Indian Reservation)



March 21, 2023

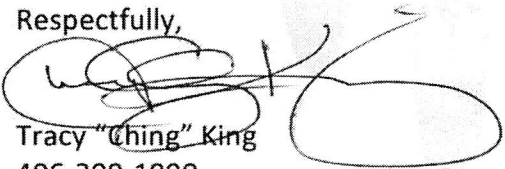
Mr. Chairman, MT Legislators,

My name is Tracy "Ching" King, I serve on the Fort Belknap Indian Community Council as the At-Large Assiniboine Representative, and I have been involved with Indian Child Welfare concerns and issues for over 40 years. I would like to submit this letter, for the record, concerning HB 317.

For generations, the federal government created laws that separated American Indian Families from their original family structure, causing horrific harm to far too many of our men, women, and children. These "unnatural atrocities" (historically) have caused so much despair and distress throughout Indian Country, and still today, we see and feel these unnecessary experiences.

Supporting the Montana Indian Child Welfare Act will help so many of our people (including myself) to heal and become successful. I am very supportive of the Montana Indian Child Welfare Act, and would greatly appreciate your support in passing this proposed legislation.

Respectfully,


Tracy "Ching" King
406-399-1990

Bill: HB-317
Committee: (S) Public Health, Welfare and Safety
Position: Proponent
Representation: No
Representation Org: N/A
Full Name: Cherilyn DeVries
Zoom Request: No
City/State: Kalispell, Montana

Dear members of the Senate Public Health, Welfare, and Safety Committee,

I urge you to vote in support of HB 317, which has broad support from child welfare professionals in our state.

During my time in Montana, I have been gaining more understanding about the destructive impacts of Indian boarding schools, federal and state policies, and activity by religious groups that encouraged practices that ripped Indigenous children from their families, cultures, and communities and placed them in situations where they were cruelly abused. Please honor and act on the powerful testimony that sovereign Indigenous people across Montana have given today.

Unfortunately, we know that prejudices against Indigenous people that were in place more hundreds of years ago are still active today. HB 317 helps us work against these destructive systems and ideas to make sure that Indigenous parents, extended family members, and Tribal nations have every opportunity to nurture children within their culture. It may be painful to recall the past but let us acknowledge the harm done and support better policies by passing HB 317.

Bill: HB-317
Committee: (S) Public Health, Welfare and Safety
Position: Proponent
Representation: No
Representation Org: N/A
Full Name: Jessica Crist
Zoom Request: Yes
City/State: Great Falls, Montana

I wish to testify in favor of HB 317, a bill which puts Montana on record supporting the Federal Indian Child Welfare Act, and strengthens its provisions in our state. At one point in United States history the policy was to weaken American Indian nations by forcibly putting children in boarding schools, often far away from home. In those schools, some of which were government-run and some of which were church-run, children were forbidden to speak their language, practice their religion, wear their traditional clothes. Many experienced violence and abuse from the schools. As Captain William Pratt of the Carlisle Indian School explained, the intent was "to kill the Indian and save the man[sic]."

The Indian Child Welfare Act is an acknowledgment that destroying culture was not appropriate, and that keeping Native American children within their own culture was a better policy. ICWA outlines how to make this possible. While ICWA cannot undo the great damage done by past misguided policies, it prevents further cultural annihilation by taking seriously the importance of history and culture for the well-being of children and families.

Rev. David H. Rommerein

11 Idaho Avenue
Whitefish, Montana 59937
347-461-8735
drommerein@gmail.com

To the Public Health, Welfare and Safety Committee

It is vital (life giving!) that you pass HB 317 Montana Indian Child Welfare Act for our Indigenous Community and the entire state.

The well being of our children and the children of the Native Communities to remain in the care of elders, family network, cultural integrity, language, education, spiritual, and religious nurture is essential for the entire citizens of this state.

This legislation seeks to do the right thing that has a long history of harm in our history by separating families, children from their roots.

I ask you to do right by empowering the Montana Indians Child Welfare Act.

Sincerely

Rev. David H. Rommerein

Lutheran clergy of the Montana Lutheran Synod of the Evangelical Lutheran Church of America

Bill: HB-317
Committee: (S) Public Health, Welfare and Safety
Position: Proponent
Representation: No
Representation Org: N/A
Full Name: Kennedy-Anne Marx
Zoom Request: No
City/State: Missoula, MT

I believe that Native families have the right to stay together. I support HB 317, and I would like to ask for you representatives to vote yes and support HB 317. It is essential that we address the history of the United States's forcing removal of Native children from their families and placing them in homes outside of their culture. Native families have a right to stay together, and a right to preserve their culture, identity and language.

Additional Documents

SENATE: Public Health

Date: 3-22-2023

Bill No. HB 317

Bill: HB-317

Committee: (S) Judiciary

Position: Proponent

Representation: No

Representation Org: N/A

Full Name: Victoria Parker

Zoom Request: Yes

City/State: Stevensville, MT

Hello, my name is Victoria Parker. I am Western Shoshone from Northern Nevada. I own Bitterroot Legal Services and contract with the State to provide legal representation for children in abuse & neglect cases, which includes ICWA cases. I support this bill and ask that you will as well. I have seen and represented a disproportionate number of Native American children in these types of cases here in Montana. This bill would ensure that these children are properly placed in culturally relevant homes. This is important because I have seen a higher rate of success when placing Native children with family that have connections to their tribes and reservations. I have also seen a higher rate of failure when placed in non-Native foster homes. Some of the saddest outcomes I have seen is increased rates of runaways, depression, suicide attempts, and drug/alcohol abuse due to placement in non-Native homes. These children are already in a difficult situation being removed from their homes due to abuse and neglect; the lack of stability is compounded when they are put into homes with people that don't understand their unique cultural or spiritual practices, or don't care to visit reservations and family members due to the distance from cities to rural reservations.

ICWA was initially created as a way for the federal government to right the wrongs that were caused by the boarding school system where Native children were stolen from reservations and ripped from their families so they could have the "Indian" beaten out of them. It is unfathomable for most people to think about this possibility due to the legal safeguards and judicial processes we have today. But for Native families this isn't distant history or an unfathomable idea. Both my grandparents remember being rounded up on cattle trucks and stolen in the middle of the night, hauled across Nevada, and placed in Stewart Indian School. My mother remembers having to take her younger brother and hide any time a BIA Agent came onto the reservation in fear of being stolen. Eventually she was also sent to Stewart Indian School. It was decades before my grandparents felt safe enough to speak their language in their own homes. My grandfather developed an alcohol problem to quiet the nightmares he had from being beaten at that school.

It's imperative to me that we support all Montanas, including our Native American brethren, by continuing to support successful reunification by upholding the protections this bill would provide. It would also save the State money by ensuring children don't fall to the effects of poor placement during this already difficult time. Connection to family and culture are key components to improving outcomes in Native children's ability to find stable homes and support systems within their communities. Thank you for your time, consideration, and support. I appreciate you listening to my testimony with an open mind and heart today. God bless you all.

Bill: HB-317

Committee: (S) Judiciary

Position: Proponent

Representation: No

Representation Org: N/A

Full Name: Colleen Hansen

Zoom Request: No

City/State: Missoula MT

Please vote yes.

Bill: HB-317

Committee: (S) Judiciary

Position: Proponent

Representation: No

Representation Org: N/A

Full Name: natalie shahmiri

Zoom Request: No

City/State: missoula, mt

I support this bill

Rachel "KaScene" Singer
3146 Hickman Drive
Helena, MT 59602

March 24.2023

Chairman Thomas McGillvray
Members of the Senate Public Health and Human Services Committee
State Capitol
PO Box 201706
Helena, MT 59620-1706

Re: Support for HB317

Dear Chairman Thomas McGillvray,

My name is Rachel "Kascene" Singer, for the record. I stand in strong support of HB317, an act to create the Montana Indian Child Welfare Act (MICWA).

Several siblings and I were all taken from our native birth family in the early 1970's. Thankfully my identical twin sister and I were not separated. We were 1.9 when placed in the social service system. The adoption process started at that time as we were placed in a foster home. We were three when the court proceedings commenced. Our adopted family got "visitation" rights for us, from age 1.9 – 5. We were five when our adoption was finalized.

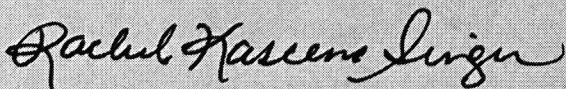
Our adopted Mama was very sad upon learning from our birth Aunties and Uncles that we were already learning our native language from our maternal birth side at the time we were taken. Mama thought we were speaking "gibberish." We were made to go to speech classes to speak correctly.

Growing up the first 2 decades of my life all I knew was that I was "Indian". Not knowing any tribal affiliation made me feel lost and feeling like I never fit in with my peers.

I could go on and on about being cheated of our native culture growing up, but I shall close here. I'd like to thank you for your support, I kindly request that a motion for a DO PASS be moved and adopted.

Ah nech me hewet.... "Walk in a Good Way",

Respectfully,



Rachel "KaScene" Singer

MINUTES
MONTANA HOUSE OF REPRESENTATIVES
68th LEGISLATURE - REGULAR SESSION
COMMITTEE ON CONFERENCE COMMITTEE ON HB 317

Call to Order: Chair Jason Small-R, on April 28, 2023 at 11:07 AM, in 350

ROLL CALL

Members Present: Sen. Jason Small, Chair (R)
Rep. Jodee Etchart (R)
Sen. Tom McGillvray (R)
Rep. Greg Oblander (R)
Sen. Susan Webber (D)
Rep. Jonathan Windy Boy (D)

Staff Present: Grace Gibney

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

Executive Action:

HB 317 ACCEPTED AS
AMENDED

EXECUTIVE ACTION ON HB 317 - Provide for the Montana Indian Child Welfare Act

11:08:51 **Motion:** Rep. Jonathan Windy Boy moved that **HB 317 BE AMENDED.**

Discussion:

11:09:28 Patrick Yawakie, Blackfeet Tribe

11:11:02 Keegan Medrano, American Civil Liberties Union of Montana (ACLU MT)

11:15:18 Sharen Kickingwoman, American Civil Liberties Union of Montana (ACLU MT)

11:20:24 Jade Bahr, Montana Budget and Policy Center (MBPC)

11:22:39 Senator Dennis Lenz, self

11:27:42 Robin Turner, Indian Law Section, State Bar of Montana

11:28:58 Patrick Yawakie, Montana American Indian Caucus

11:29:19 Representative Sharon Stewart-Peregoy, self

11:30:27 Chair Jason Small

11:30:47 Rep. Jonathan Windy Boy

11:32:37 Maddie Krezowski, Legislative Staff

11:37:49 Rep. Jonathan Windy Boy

11:38:34 Sen. Tom McGillvray

11:40:39 Rep. Jonathan Windy Boy

11:42:08 Rep. Greg Oblander

11:42:47 Sen. Susan Webber

11:45:36 Rep. Jonathan Windy Boy

11:46:44 Sen. Tom McGillvray

11:47:16 Maddie Krezowski, Legislative Staff

11:48:05 Robin Turner, Indian Law Section, State Bar of Montana

11:48:22 Sen. Tom McGillvray

11:49:01 Rep. Jonathan Windy Boy

11:49:46 Sen. Tom McGillvray

11:51:07	Rep. Greg Oblander
11:51:44	Rep. Jonathan Windy Boy
11:52:02	Maddie Krezowski, Legislative Staff
11:53:54	Chair Jason Small
11:55:37	Sen. Tom McGillvray
11:55:42	Rep. Jonathan Windy Boy
11:56:01	Keegan Medrano, American Civil Liberties Union of Montana (ACLUMT)
11:57:31	Sen. Tom McGillvray
11:57:49	Senator Dennis Lenz, self
11:59:24	Chair Jason Small
12:00:27	Sen. Susan Webber
12:03:13	Rep. Greg Oblander
12:05:10	Sen. Tom McGillvray
12:06:20	Rep. Jonathan Windy Boy
12:07:19	Sen. Tom McGillvray
12:08:26	Rep. Jonathan Windy Boy
12:08:54	Rep. Greg Oblander
12:11:51	Maddie Krezowski, Legislative Staff
12:12:07	Sen. Tom McGillvray
12:12:31	Rep. Greg Oblander
12:16:25	Chair Jason Small
12:17:16	Senator Dennis Lenz, self
12:18:01	Keegan Medrano, American Civil Liberties Union of Montana (ACLUMT)
12:19:56	Chair Jason Small
12:21:29	Maddie Krezowski, Legislative Staff
12:21:54	Rep. Jonathan Windy Boy
12:23:35	Sen. Tom McGillvray
12:24:19	Rep. Greg Oblander
12:24:24	Sen. Susan Webber

12:25:45 Sen. Tom McGillvray

12:27:19 **Motion:** Sen. Tom McGillvray moved that **HB 317 BE AMENDED.**

Discussion:

12:27:31 Maddie Krezowski, Legislative Staff

12:27:41 Sen. Tom McGillvray

12:27:19 **Vote:** Motion carried 5 - 1 by voice vote with Rep. Windy Boy, voting no.

12:29:22 **Motion:** Sen. Tom McGillvray moved that **HB 317 BE AMENDED.**

Discussion:

12:30:35 Maddie Krezowski, Legislative Staff

12:30:53 Chair Jason Small

12:29:22 **Vote:** Motion carried 5 - 1 by voice vote with Rep. Windy Boy, voting no.

12:31:35 **Motion:** Sen. Tom McGillvray moved that **HB 317 BE AMENDED.**

Discussion:

12:32:38 Rep. Greg Oblander

12:34:47 Chair Jason Small

12:31:35 **Vote:** Motion carried unanimously by voice vote.

12:35:57 **Motion:** Sen. Tom McGillvray moved that **HB 317 BE AMENDED.**

Discussion:

12:36:14 Sen. Tom McGillvray

12:37:08 Rep. Jonathan Windy Boy

12:37:43 Rep. Jodee Etchart

12:35:57 **Vote:** Motion tied 3 - 3 roll call vote

12:40:46 **Motion:** Sen. Tom McGillvray moved that **HB 317 ACCEPTED AS AMENDED.**

Discussion:

12:42:17 Rep. Jonathan Windy Boy

12:42:19 Sen. Tom McGillvray

12:40:46 **Vote:** Motion tied 3 - 3 roll call vote

ADJOURNMENT

Adjournment: 12:45:46

Jacelyn Sterling, Secretary

Additional Documents: [EXHIBIT\(230428CCSaad\)](#)



2023 Session

Additional Senate Documents

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- Any other type of documents such as:
 - @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.
- Public Testimony documents may or may not be scanned, they will be on file at the Montana Historical Society.
- Disclaimer: within the online minutes document you will see vacate spaces within the document. The LAWS II system creates these blank areas they are not loss of information.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE

REGULAR

Conference Committee on HB 317

Date: 04/28/2023

Time: 11:00 AM

Place: Capitol

Room: 350

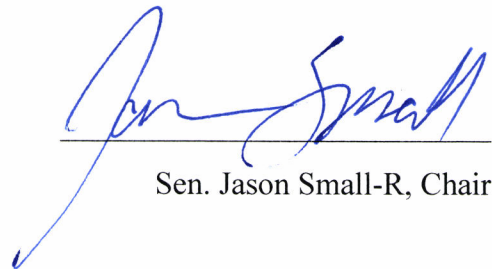
BILLS and RESOLUTIONS HEARD:

EXECUTIVE ACTION TAKEN:

HB 317:

HB 317 Accepted as Amended

Comments:

A handwritten signature in blue ink, appearing to read "Jason Small", is written over a horizontal line. The signature is stylized with a large initial "J" and a long, sweeping underline that extends to the left.

Sen. Jason Small-R, Chair

House

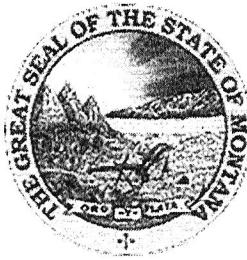
Roll Call

Conference Committee on HB 317

DATE: 04/28/2023

TIME: 11:00 AM

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/EXCUSED</u>
Small, Jason	X	
McGillvray, Tom	X	
Webber, Susan	X	
Windy Boy, Jonathan	X	
Oblander, Greg	X	
Etchart, Jodee	X	



CONFERENCE COMMITTEE

On Senate amendments to House Bill 317

Report No. 001, April 28, 2023

page 1 of 1

Mr. President and Mr. Speaker:

We, your Conference Committee met and considered Senate amendments to **House Bill 317** (reference copy-salmon) and recommended this Conference Committee be accepted.

For the Senate:

A handwritten signature in cursive script, appearing to read "Chair Small", written over a horizontal line.

Chair Small

A handwritten signature in cursive script, appearing to read "Sen. Webber", written over a horizontal line.

Sen. Webber

A handwritten signature in cursive script, appearing to read "Sen. McGillvray", written over a horizontal line.

Sen. McGillvray

Amendment coordinator

For the House:

A handwritten signature in cursive script, appearing to read "Rep. Windy Boy", written over a horizontal line.

Rep. Windy Boy

A handwritten signature in cursive script, appearing to read "Rep. Oblander", written over a horizontal line.

Rep. Oblander

Rep. Etchart

And, recommend that **House Bill 317** (reference copy-salmon) be **Accepted as Amended**.

ADOPT
REJECT

Amendment # House Bill 317001

Amendment - 1st Reading/2nd House-blue - Requested by: Jonathan Windy Boy -
Conference Committee on HB 317

- 2023

68th Legislature 2023

Drafter: Madelyn Krezowski, (406) 444-6857

HB0317.003.001

HOUSE BILL NO. 317

INTRODUCED BY J. WINDY BOY, M. WEATHERWAX, C. KEOGH, D. HAWK, E. KERR-CARPENTER, A.
BUCKLEY, K. SULLIVAN, K. KORTUM, T. FRANCE, E. STAFMAN, M. CAFERRO, M. THANE, F. SMITH, M.
FOX, S. MORIGEAU, J. ETCHART, K. ABBOTT, P. TUSS, S. STEWART PEREGOY, B. CARTER, Z.
ZEPHYR, M. ROMANO, L. SMITH, D. BAUM, E. MATTHEWS, S. HOWELL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA INDIAN CHILD WELFARE ACT;
PROVIDING REQUIREMENTS FOR DETERMINING INDIAN STATUS AND INDIAN TRIBE; ESTABLISHING
REQUIREMENTS FOR COURT PROCEEDINGS, EVIDENCE, AND CONSENT; PROVIDING DEFINITIONS;
AMENDING SECTIONS 40-6-405, 40-6-407, 40-6-413, 40-6-414, 40-6-1001, 40-7-135, 41-3-102, 41-3-103,
41-3-109, 41-3-128, 41-3-205, 41-3-301, 41-3-306, 41-3-307, 41-3-422, 41-3-423, 41-3-425, 41-3-427, 41-3-
432, 41-3-437, 41-3-444, 41-3-609, 42-2-102, 42-2-604, 42-4-102, 42-4-103, 42-4-203, 42-4-209, 42-5-101, 42-
5-107, 47-1-104, AND 52-2-117, MCA; ~~PROVIDING FOR CONTINGENT VOIDNESS;~~ AND PROVIDING
EFFECTIVE DATES ~~AND A TERMINATION DATE.~~"

WHEREAS, THERE IS, AT THE PRESENT TIME, A COURT CASE BEFORE THE UNITED STATES SUPREME COURT
KNOWN AS HAALAND V. BRACKEEN, NO. 21-376, THAT HAS THE POTENTIAL TO OVERTURN OR MODIFY THE INDIAN CHILD
WELFARE ACT IN ITS CURRENT FORM, AND THE LEGISLATURE SEEKS TO PROVIDE GUIDANCE FOR INDIAN CHILD
PROTECTION CASES IN THE INTERIM AS THIS CASE IS DECIDED. THE LEGISLATURE DOES NOT EXPECT THIS TO BE THE
FINAL WORD ON HOW WE DEAL WITH INDIAN CHILD WELFARE ISSUES OR HOW WE SEEK TO PROVIDE FOR ALL OF
MONTANA'S CHILDREN WITHIN THE CHILD PROTECTION SYSTEM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 20 ~~19~~ ~~16~~ 18] may be cited as the
"Montana Indian Child Welfare Act".

**Amendment - 1st Reading/2nd House-blue - Requested by: Jonathan Windy Boy -
Conference Committee on HB 317**

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~~NEW SECTION. Section 3. — Applicability. [Sections 1 through 20 19] apply in all child custody proceedings. Whenever a child custody proceeding involves an Indian child and a conflict exists between [sections 1 through 20 19] and Title 40, chapter 6, Title 41, chapter 3 or 4, or Title 42, the provisions of [sections 1 through 20 19] apply.~~

~~NEW SECTION. Section 3. Definitions. As used in [sections 1 through 20 19 16 18], the following definitions apply:~~

~~(1) "Active efforts" means affirmative, active, thorough, and timely efforts meeting the requirements of [section 44 13 10 12] that are intended primarily to maintain or reunite an Indian child with the child's family and that are tailored to the facts and circumstances of the case.~~

~~(2) "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.~~

~~(3) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian Child Welfare Act, [sections 1 through 20 19], and other applicable law that are designed to:~~

~~(a) protect the safety, well-being, development, and stability of the Indian child;~~

~~(b) prevent the unnecessary out-of-home placement of the Indian child;~~

~~(c) acknowledge the right of Indian tribes to maintain their existence and integrity in order to promote the stability and security of their children and families; and~~

~~(d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.~~

~~(4)(3) (a) "Child custody proceeding" means any state or private proceeding, other than an emergency proceeding, that may culminate in a foster care placement, termination of parental rights, preadoptive placement, or adoptive placement.~~

~~(b) The term does not include a placement based on:~~

~~(i) an act that, if committed by an adult, would be considered a crime; or~~

~~(ii) an award, in a dissolution proceeding, of custody to one of the child's parents.~~

~~(5)(4) "Court of competent jurisdiction" means a court that has jurisdiction over the relevant subject~~

**Amendment - 1st Reading/2nd House-blue - Requested by: Jonathan Windy Boy -
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Drafter: Madelyn Krezowski, (406) 444-6857

HB0317.003.001

(b) The term includes an Alaska Native village as defined in 43 U.S.C. 1602.

~~(14)~~(13)"Member" or "membership" means a determination by an Indian tribe that an individual is a member of or eligible for membership in that Indian tribe.

~~(15)~~(14)(a) "Parent" means a biological parent of an Indian child or an individual who has lawfully adopted an Indian child, including adoptions made as tribal customary adoptions.

(b) The term does not include an unwed father whose paternity has not been acknowledged or established under Title 40, chapter 6, part 1, or the applicable laws of another state.

~~(16)~~(15)"Preadoptive placement" means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement.

~~(17)~~—"Qualified expert witness" means a person who meets the provisions of [section 13 12].

~~(18)~~(16)"Termination of parental rights" means any action resulting in the termination of the parent-child relationship.

~~(19)~~(17)"Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings. The term includes but is not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, and an administrative body of an Indian tribe vested with authority over child custody proceedings.

~~(20)~~—(a) " Tribal customary adoption" means adoption or another process through the tribal custom, traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and through which the nonparent is vested with the rights, privileges, and obligations of a legal parent.

~~(b)~~—Termination of the parent-child relationship between the Indian child and the biological parent is not required to recognize a tribal customary adoption.

NEW SECTION. Section 4. Determination of Indian status -- confidentiality of records. (1) (a) A

party seeking the foster care placement of, termination of parental rights over, or adoption of a child shall use due diligence to determine whether the child is an Indian child. The inquiry must be made in consultation with:

(i) the child's parent or parents;

(ii) an individual who has custody of the child or with whom the child resides;

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- 1 (ii) it has discovered information indicating that the child is an Indian child;
- 2 (b) the child who is the subject of the proceeding gives the court reason to know the child is an
- 3 Indian child;
- 4 (c) the court is informed that the residence or domicile of the child, the child's parent, or the child's
- 5 Indian custodian is on a reservation or in an Alaska Native village;
- 6 (d) the court is informed that the child is or has been a ward of a tribal court;
- 7 (e) the court is informed that either of the parents or the child possesses an identification card
- 8 indicating membership in an Indian tribe; or
- 9 (f) the court determines from additional information provided that the child may be an Indian child.
- 10 (6) (a) When seeking verification of a child's Indian status during a voluntary proceeding, the court
- 11 shall keep relevant documents pertaining to the inquiry confidential and under seal if a consenting parent
- 12 expresses either orally or in writing a desire for anonymity. A request for anonymity does not relieve the court,
- 13 agency, or other party from any duty of compliance with [sections 1 through ~~20 19 16 18~~], including the
- 14 obligation to verify whether the child is an Indian child.
- 15 (b) A tribe receiving information related to an inquiry of a child's status as an Indian child must
- 16 keep documents and information confidential.
- 17 (7) ~~(a)~~ (a) A written determination by an Indian tribe regarding the child's status as an Indian child
- 18 is conclusive that the child is an Indian child.
- 19 ~~(b) If a tribe provides no response to the department's written request for verification of the child's~~
- 20 ~~membership status, the nonresponse does not constitute evidence that the child is not a member of or eligible~~
- 21 ~~for membership in the tribe.~~
- 22 ~~(8) If a child has been determined not to be an Indian child, any party to the proceeding or an~~
- 23 ~~Indian tribe that subsequently determines the child is a member or is eligible for membership may move, during~~
- 24 ~~the pendency of a child custody proceeding to which the federal Indian Child Welfare Act or [sections 1 through~~
- 25 ~~20 19] applies, for redetermination of the child's Indian status based on:~~
- 26 ~~(a) new evidence;~~
- 27 ~~(b) a redetermination by the child's tribe;~~

**Amendment - 1st Reading/2nd House-blue - Requested by: Jonathan Windy Boy -
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1 as the Indian child's tribe. In making the designation, the court shall consider:

- 2 (i) the preference of the parents for membership of the child;
- 3 (ii) the length of the child's past residence or domicile on or near the reservation of each tribe;
- 4 (iii) the tribal membership of the child's custodial parent or Indian custodian;
- 5 (iv) the interest asserted by each tribe in the child custody proceeding;
- 6 (v) whether there has been a previous adjudication with respect to the child by a court of one of
- 7 the tribes; and
- 8 (vi) self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-
- 9 identify with a tribe.

10 (4) A determination of the Indian child's tribe for the purposes of [sections 1 through 20 ~~19~~ ~~16~~ 18]

11 does not constitute a determination for any other purpose.

12

13 **NEW SECTION. Section 6. Jurisdiction – transfer of jurisdiction.** (1) An Indian tribe has exclusive

14 jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the

15 reservation of that tribe unless:

16 (a) the tribe has consented to the state's concurrent jurisdiction PURSUANT TO PUBLIC LAW 280 OR

17 25 U.S.C. 1919;

18 (b) the tribe has expressly declined to exercise its exclusive jurisdiction; or

19 (c) the state is exercising emergency jurisdiction in compliance with [section ~~16~~ ~~15~~ ~~12~~ 14].

20 (2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding,

21 the Indian tribe may retain exclusive jurisdiction regardless of the residence or domicile of the child.

22 (3) Except as provided in ~~subsections (4) and (6)~~ SUBSECTION (5), in a child custody proceeding

23 involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the

24 court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian

25 child's tribe on the motion of any of the following:

- 26 (a) either of the Indian child's parents;
- 27 (b) the Indian child's Indian custodian; OR

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- 1 **(b) In determining whether good cause exists, the court may not consider:**
2 **(i) whether the child custody proceeding is at an advanced stage;**
3 **(ii) whether there have been prior proceedings involving the child for which no petition to transfer**
4 **was filed;**
5 **(iii) whether transfer could affect the placement of the child;**
6 **(iv) the child's cultural connections with the tribe or its reservation; or**
7 **(v) socioeconomic conditions or any negative perception of the tribal or bureau of Indian affairs**
8 **social services or judicial systems.**
9 **(c) If the court denies transfer of jurisdiction, the court shall state its reasons for the denial orally on**
10 **the record or in a written order.**
11 ~~(8)(6)(7)~~ (a) Following entry of an order transferring jurisdiction to the Indian child's tribe and
12 pending receipt of a tribal court order accepting jurisdiction, the state court:
13 (i) may conduct additional hearings and enter orders that are in the best interests of the child and
14 strictly comply with the requirements of the federal Indian Child Welfare Act and [sections 1 through 20 ~~19~~ 16
15 18]; and
16 (ii) may not enter a final order in a child custody proceeding, except an order dismissing the
17 proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the
18 child was removed.
19 (b) On receipt of an order from a tribal court accepting jurisdiction, the court shall:
20 (i) dismiss the child custody proceeding with prejudice; and
21 (ii) expeditiously provide the tribal court with all records related to the proceeding, including but not
22 limited to the pleadings and any court record. The state court shall work with the tribal court to ensure the
23 transfer of the custody of the Indian child and the proceeding is accomplished smoothly and in a way that
24 minimizes the disruption of services to the family.
25 ~~(9)(7)(8)~~ If the Indian child's tribe accepts jurisdiction, the state court shall enter an order
26 relieving the office of the state public defender and any public defender assigned pursuant to 41-3-425 and 47-
27 1-104 from further representation.

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1 mail with return receipt requested.

2 (3) A foster care placement or a termination of parental rights proceeding may not be held until at
3 least 10 days after receipt of the notice by the parent or Indian custodian, the tribe, and, if applicable, the
4 secretary. The parent, Indian custodian, or tribe shall, on request, be granted up to 20 additional days to
5 prepare for the proceeding. The 10-day notice requirement does not limit a court's ability to hold an emergency
6 protective services hearing pursuant to 41-3-306.

7 (4) Notice provided under this section must be in clear and understandable language and include
8 the following:

9 (a) the child's name, date of birth, and place of birth;

10 (b) all known names of the child's parents, including maiden, married, and former names or
11 aliases;

12 (c) the parents' dates of birth, places of birth, and tribal enrollment numbers, if known;

13 (d) the names, dates of birth, places of birth, and tribal enrollment information of other direct lineal
14 ancestors of the child, if known;

15 (e) the name of each Indian tribe in which the child is a member or may be eligible for membership
16 if a biological parent is a member; and

17 (f) a copy of the petition, complaint, or other document by which the child custody proceeding was
18 initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing.

19

20 ~~NEW SECTION. Section 9. Tribal participation in proceedings—intervention.~~ (1) A state court
21 shall allow a designated tribal representative to represent a tribe in all proceedings under [sections 1 through 20
22], in person or by electronic means. The court may not require that the tribal representative be an attorney or
23 that the person be licensed in Montana if the person is an attorney.

24 (2) ~~An attorney may appear in a proceeding involving an Indian child under [sections 1 through 20]~~
25 without complying with any rule of the Montana supreme court regarding admission to practice in the state or
26 paying the associated fees or assessments related to admission to practice if the attorney is:

27 (a) ~~permitted to practice in another state, tribe, or territory of the United States or District of~~

**Amendment - 1st Reading/2nd House-blue - Requested by: Jonathan Windy Boy -
Conference Committee on HB 317**

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Drafter: Madelyn Krezowski, (406) 444-6857

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~~(2) The petitioning party shall consult with the Indian child's tribe on the selection of the qualified expert witness, including asking whether the tribe has a list of preferred qualified expert witnesses. To the extent possible, the petitioning party shall use an individual preferred by the tribe.~~

~~(3) A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and must be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe.~~

~~(4) (a) If the petitioner is the department, the child protection specialist assigned to the case and the child protection specialist's supervisor may not testify as qualified expert witnesses in the case.~~

~~(b) Nothing in this subsection (4) may be construed as barring:~~

~~(i) the child protection specialist or the child protection specialist's supervisor from testifying as an expert witness for other purposes in a proceeding under [sections 1 through 20 19]; or~~

~~(ii) the petitioner or another party in a proceeding under [sections 1 through 20 19] from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court, including the determination of whether the continued custody of the Indian child by or return of the Indian child to the parent, parents, or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.~~

NEW SECTION. Section 11. Qualified expert witness -- requirements -- prohibitions. (1) A

qualified expert witness is an individual who provides testimony in a child custody proceeding under [sections 1 through 18]. The purpose of the testimony is to assist a court in determining whether the continued custody of the child by or the return of the child to the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The parties may not waive the requirement for the qualified expert witness testimony.

(2) The petitioning party shall consult with the Indian child's tribe on the selection of the qualified expert witness, including asking whether the tribe has a list of preferred qualified expert witnesses. To the extent possible, the petitioning party shall use an individual preferred by the tribe.

(3) A qualified expert witness must be qualified to testify regarding whether the child's continued

**Amendment - 1st Reading/2nd House-blue - Requested by: Jonathan Windy Boy -
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- 1 (i) conducting a comprehensive assessment of the circumstances of the Indian child's family, with
2 a focus on safe reunification as the most desirable goal;
- 3 (ii) identifying appropriate services and helping the parents to overcome barriers, including actively
4 assisting the parents in obtaining the services;
- 5 (iii) identifying, notifying, and inviting representatives of the Indian child's tribe to participate in
6 providing support and services to the Indian child's family and in family team meetings, permanency planning,
7 and resolution of placement issues;
- 8 (iv) conducting or causing to be conducted a diligent search for the Indian child's extended family
9 members and contacting and consulting with extended family members to provide family structure and support
10 for the Indian child and the Indian child's parents;
- 11 (v) offering and employing all available and culturally appropriate family preservation strategies
12 and facilitating the use of remedial and rehabilitative services provided by the child's tribe;
- 13 (vi) taking steps to keep siblings together whenever possible;
- 14 (vii) supporting regular visits with parents or Indian custodians in the most natural setting possible
15 as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure
16 the health, safety, and welfare of the child;
- 17 (viii) identifying community resources, including housing, financial, transportation, mental health,
18 substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the
19 child's family, in accessing and using the resources;
- 20 (ix) monitoring progress and participation in services;
- 21 (x) considering alternative ways to address the needs of the Indian child's parents and, when
22 appropriate, the family, if the optimum services do not exist or are not available; and
- 23 (xi) providing postreunification services and monitoring.
- 24 (b) Referral to a service or program does not constitute an active effort if the referral was the sole
25 action taken.

26
27 **NEW SECTION. Section 13. Evidentiary requirements.** (1) A court may not order a foster care

**Amendment - 1st Reading/2nd House-blue - Requested by: Jonathan Windy Boy -
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1 ~~20 19 16 18~~] may be construed to prevent the department from removing an Indian child from the Indian child's
2 parent or Indian custodian or prevent the emergency placement of the Indian child in a foster home, under
3 applicable state law, to prevent imminent physical damage or harm to the Indian child.

4 (2) An emergency removal or placement of an Indian child under state law must terminate
5 immediately when the emergency removal or placement is no longer necessary to prevent imminent physical
6 damage or harm to the child.

7 (3) A state court shall:

8 (a) make a finding on the record that the emergency removal or placement is necessary to prevent
9 imminent physical damage or harm to the child;

10 (b) promptly hold a hearing on whether the emergency removal or placement continues to be
11 necessary whenever new information indicates that the emergency situation has ended;

12 (c) at any court hearing during the emergency proceeding, determine whether the emergency
13 removal or placement is no longer necessary to prevent imminent physical damage or harm to the child; and

14 (d) immediately terminate or direct the department to terminate the emergency removal if the court
15 or department possesses sufficient evidence to determine that the emergency removal or placement is no
16 longer necessary to prevent imminent physical damage or harm to the child.

17 (4) An emergency proceeding may be terminated by any of the following actions:

18 (a) initiation of a child custody proceeding subject to the provisions of the federal Indian Child
19 Welfare Act and [sections 1 through ~~20 19 16 18~~];

20 (b) transfer of the child to the jurisdiction of the appropriate Indian tribe; or

21 (c) restoring the child to the parent or Indian custodian.

22 (5) A petition for a court order authorizing the emergency removal or placement, or its
23 accompanying documents, must contain a statement of the risk of imminent physical damage or harm to the
24 Indian child, any evidence that the emergency removal or placement continues to be necessary to prevent the
25 damage or harm, and if available:

26 (a) the full name, age, and last known address of the Indian child;

27 (b) the name and address of the child's parents and Indian custodians, if any;

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NEW SECTION. Section 15. Consent. (1) At an involuntary foster care placement hearing, a

stipulation or consent by the parent or Indian custodian is not valid unless the court certifies on the record that the terms and consequences of the stipulation or consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall certify on the record that the parent or Indian custodian fully understood the explanation in English or that the explanation was translated into a language that the parent or Indian custodian understood.

(2) In a voluntary proceeding for foster care placement or termination of parental rights, consent by a parent or Indian custodian is not valid unless the consent is:

(a) executed in writing and recorded before a judge of a court of competent jurisdiction; and

(b) accompanied by the judge's written certificate that:

(i) the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian; and

(ii) the parent or Indian custodian fully understood the explanation in English or that the explanation was translated into a language that the parent or Indian custodian understood.

(3) Voluntary consent for release of custody given prior to or within 10 days after the birth of an Indian child may not be considered valid.

(4) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care placement at any time. On withdrawal of consent, the Indian child must be returned to the parent or Indian custodian.

(5) In a voluntary proceeding for termination of parental rights to or adoptive placement of an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an order terminating parental rights or a final decree of adoption, and the Indian child must be returned to the parent.

(6) (a) After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption on the grounds that consent was obtained through fraud or duress. On a finding that consent was obtained through fraud or duress, the court shall vacate the decree and return the Indian child to the parent.

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- 1 (2) In a foster care or preadoptive placement, preference must be given, in the absence of good
2 cause to the contrary, to the Indian child's placement with one of the following, in descending order of priority:
- 3 (a) an Indian child's extended family member;
- 4 (b) a foster home licensed, approved, or specified by the Indian child's tribe;
- 5 (c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- 6 (d) an institution for children approved by an Indian tribe or operated by an Indian organization that
7 has a program suitable to meet the Indian child's needs.
- 8 (3) In the absence of good cause to the contrary, in an adoptive or other permanent placement of
9 an Indian child, preference must be given to a placement with one of the following, in descending order of
10 priority:
- 11 (a) extended family members;
- 12 (b) an Indian family of the same tribe as the Indian child;
- 13 (c) ~~an Indian family that is of a similar culture to the Indian child's tribe; or~~
- 14 (d)(c) another Indian family.
- 15 (4) Notwithstanding the placement preferences listed in subsections (2) and (3), if a different order
16 of placement preference is established by the Indian child's tribe, the court or agency implementing the
17 placement shall follow the order of preference established by the tribe if the placement is in the least restrictive
18 setting appropriate to the particular needs of the Indian child and within reasonable proximity to the child's
19 home.
- 20 (5) When appropriate, the preference of the Indian child or the child's parent must be considered
21 by the court.
- 22 (6) The standards to be applied in meeting the preference requirements of this section must be the
23 prevailing social and cultural standards of the Indian community in which the parent or extended family
24 members of an Indian child reside or with which the parent or extended family members maintain social and
25 cultural ties.
- 26 (7) Nothing in this section prevents the department or the court from placing an Indian child with a
27 parent to effectuate a permanency plan regardless of the parent's relationship to the Indian child's tribe.

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"40-6-405. Surrender of newborn to emergency services provider -- temporary protective

custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

(2) The emergency services provider shall make a reasonable effort to do all of the following:

(a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;

(b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;

(c) if possible, ascertain whether the newborn has a tribal affiliation and, if so, ascertain relevant information pertaining to any Indian heritage of the newborn;

(d) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:

(i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;

(ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;

(iii) the parent may not receive personal notice of the court proceedings begun by the department;

(iv) information that the parent provides to an emergency services provider will not be made public;

(v) a parent may contact the department for more information and counseling; and

(vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20 49 46 18].

(3) After providing a parent with the information described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:

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publication in a newspaper of general circulation in the county where the newborn was surrendered.

(2) The department, after assuming the care, custody, and control of a newborn under subsection (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not required to search for relatives of the newborn as a placement or permanency option or to implement other placement requirements that give preference to relatives if the department does not have information as to the identity of the newborn or either of the newborn's parents. The department shall place the newborn with prospective adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding the newborn's medical history, date of birth, or age if the department has that information.

(3) A newborn surrendered under 40-6-405 is presumed to have been born in Montana unless the biological parent otherwise informs the department or the emergency services provider to whom the newborn is surrendered.

(4) A Montana birth certificate may be issued based on the presumption of birth in Montana as provided in subsection (3). A birth certificate issued to a newborn surrendered under 40-6-405 must provide a date of birth based on either the actual date of birth, if known, or on the date of birth determined by the physician who performs the medical examination of the newborn under 40-6-406."

Section 21. Section 40-6-413, MCA, is amended to read:

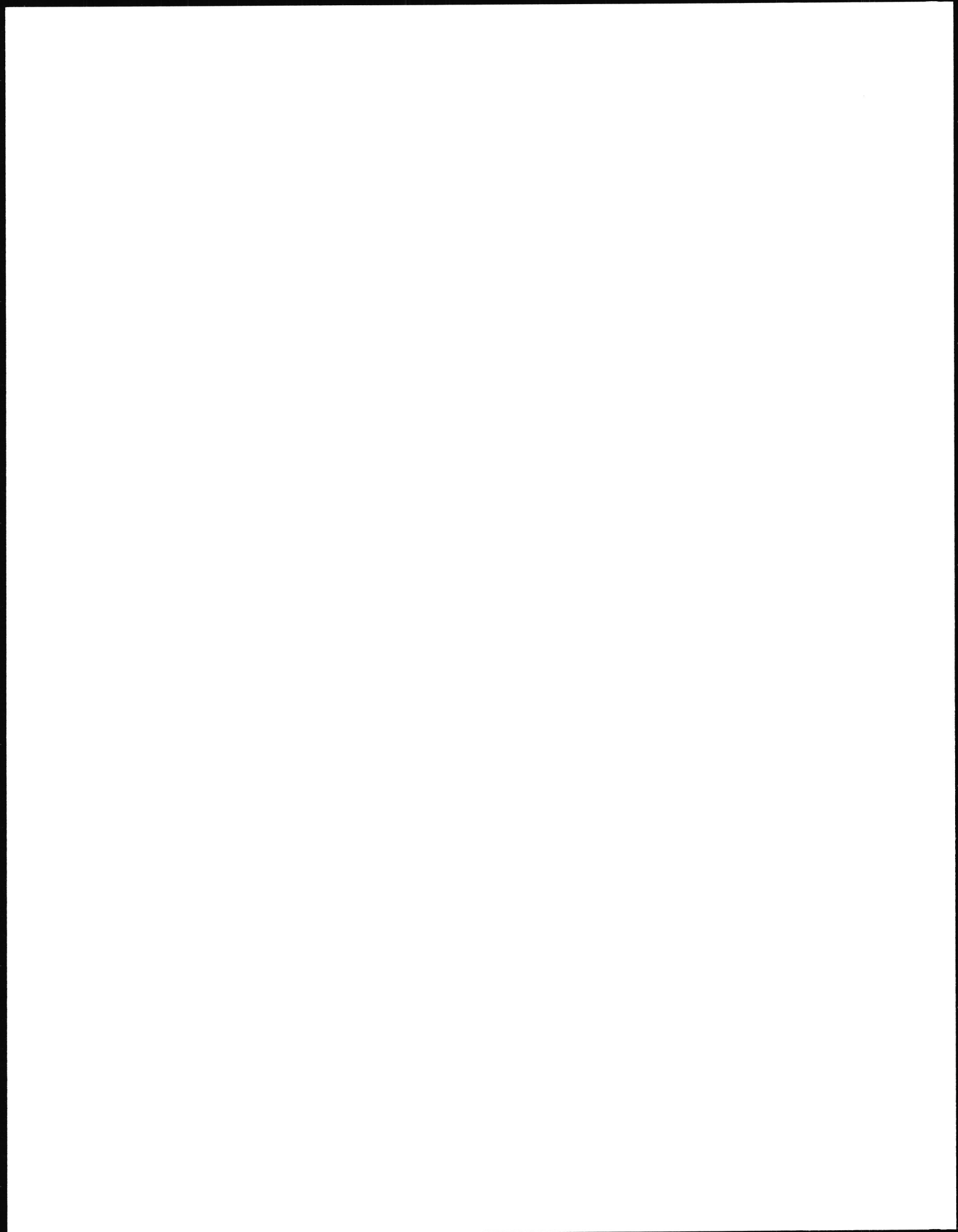
"40-6-413. Custody action – order. Based on the court's finding of the newborn's best interest under 40-6-412, the court may issue an order:

(1) granting legal or physical custody, or both, of the newborn to the parent and either retaining or relinquishing jurisdiction; or

(2) denying custody of the newborn to the parent and referring the matter to the department or county attorney for proceedings under Title 41, chapter 3, and, if applicable, [sections 1 through 20 40 46 18]."

Section 22. Section 40-6-414, MCA, is amended to read:

"40-6-414. Presumption of waiver of parental rights -- department to file petition. (1) A-Except as provided in [section 47 46 43 15], a parent who surrenders a newborn under 40-6-405 and who does not file a



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(8) (a) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except:

(i) the right of the child to inherit from the parent; and
(ii) that nothing in this section may be construed to relieve the parent whose rights are terminated as provided in this part of any child support obligations as provided in Title 40, chapters 4 and 5.

(b) An order or decree entered pursuant to this part may not disentitle a child to any benefit due to the child from a third person, including but not limited to an Indian tribe, an agency, a state, or the United States."

Section 24. Section 40-7-135, MCA, is amended to read:

"40-7-135. Application to Indian tribes. (1) A child custody proceeding that pertains to an Indian child as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4 3] is not subject to this chapter to the extent that it is governed by the federal Indian Child Welfare Act or [sections 1 through 20 19 16 18].

(2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, 40-7-134 through 40-7-140, and part 2 of this chapter.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this chapter."

Section 25. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

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needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare;

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(C) any form of child sex trafficking or human trafficking.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act ~~is or~~ sections 1 through 20 49 16 181 are applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Child protection specialist" means an employee of the department who investigates allegations of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

(9) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(10) "Department" means the department of public health and human services provided for in 2-15-2201.

(11) "Family engagement meeting" means a meeting that involves family members in either

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1 placement with a legal guardian, placement with a fit and willing relative, or placement in another planned
2 permanent living arrangement until the child reaches 18 years of age.

3 (20) "Physical abuse" means an intentional act, an intentional omission, or gross negligence
4 resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns,
5 bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or
6 function, or death.

7 (21) "Physical neglect" means either failure to provide basic necessities, including but not limited to
8 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
9 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing
10 the child to be exposed to an unreasonable physical or psychological risk to the child.

11 (22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the
12 parent or other person responsible for the child's welfare:

13 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological
14 abuse or neglect;

15 (ii) commits or allows sexual abuse or exploitation of the child;

16 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child
17 was abused or neglected by a parent or other person responsible for the child's welfare;

18 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate
19 food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or
20 offered financial or other reasonable means to do so;

21 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or
22 welfare by failing to intervene or eliminate the risk; or

23 (vi) abandons the child.

24 (b) The term does not include a youth not receiving supervision solely because of parental inability
25 to control the youth's behavior.

26 (23) (a) "Protective services" means services provided by the department:

27 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

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1 (C) A PROFESSIONAL PERSON WHO HAS SUBSTANTIAL EDUCATION AND EXPERIENCE IN PROVIDING
2 SERVICES TO CHILDREN AND FAMILIES AND WHO POSSESSES SIGNIFICANT KNOWLEDGE OF AND EXPERIENCE WITH INDIAN
3 CULTURE, FAMILY STRUCTURE, AND CHILD-REARING PRACTICES IN GENERAL.

4 (26) "Qualified individual" means a trained professional or licensed clinician who:

5 (a) has expertise in the therapeutic needs assessment used for placement of youth in a
6 therapeutic group home;

7 (b) is not an employee of the department; and

8 (c) is not connected to or affiliated with any placement setting in which children are placed.

9 (27) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe
10 that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known
11 to the person.

12 (28) "Residential setting" means an out-of-home placement where the child typically resides for
13 longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

14 (29) "Safety and risk assessment" means an evaluation by a child protection specialist following an
15 initial report of child abuse or neglect to assess the following:

16 (a) the existing threat or threats to the child's safety;

17 (b) the protective capabilities of the parent or guardian;

18 (c) any particular vulnerabilities of the child;

19 (d) any interventions required to protect the child; and

20 (e) the likelihood of future physical or psychological harm to the child.

21 (30) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
22 consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a
23 minor, or incest, as described in Title 45, chapter 5.

24 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area
25 while attending to the sanitary or health care needs of that infant or toddler by a parent or other person
26 responsible for the child's welfare.

27 (31) "Sexual exploitation" means:

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(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the

treatment itself under the circumstances would be inhumane. For purposes of this subsection (34), "infant"

means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously

hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference

to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued

when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws

regarding medical neglect of children 1 year of age or older.

(35) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 26. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction and venue. (1) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20 49 46 18], in all matters arising under this chapter, a person is subject to a proceeding under this chapter and the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court;

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose;

(d) a youth or youth's parent or guardian who resides in Montana;

(e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in Montana.

(2) Venue is proper in the county where a youth is located or has resided within 180 days before the filing of a petition under this part or a county where the youth's parent or guardian resides or has resided

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department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny the certificate if it determines that the applicant is not sufficiently rehabilitated."

Section 29. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in

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- 1 (p) the news media, if disclosure is limited to confirmation of factual information regarding how the
2 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
3 guardian, as determined by the department;
- 4 (q) an employee of the department or other state agency if disclosure of the records is necessary
5 for administration of programs designed to benefit the child;
- 6 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if
7 disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act or [sections
8 1 through 20 49 46 18];
- 9 (s) a juvenile probation officer who is working in an official capacity with the child who is the
10 subject of a report in the records;
- 11 (t) an attorney who is hired by or represents the department if disclosure is necessary for the
12 investigation, defense, or prosecution of a case involving child abuse or neglect;
- 13 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen
14 review board established under Title 41, chapter 3, part 10;
- 15 (v) a school employee participating in an interview of a child by a child protection specialist, county
16 attorney, or peace officer, as provided in 41-3-202;
- 17 (w) a member of a county or regional interdisciplinary child information and school safety team
18 formed under the provisions of 52-2-211;
- 19 (x) members of a local interagency staffing group provided for in 52-2-203;
- 20 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or
- 21 (z) a principal of a school or other employee of the school district authorized by the trustees of the
22 district to receive the information with respect to a student of the district who is a client of the department.
- 23 (4) (a) The records described in subsection (3) must be disclosed to a member of the United
24 States congress or a member of the Montana legislature if all of the following requirements are met:
- 25 (i) the member receives a written inquiry regarding a child and whether the laws of the United
26 States or the state of Montana that protect children from abuse or neglect are being complied with or whether
27 the laws need to be changed to enhance protections for children;

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- 1 (ii) a sexual offense, as defined in 46-23-502, against the child;
- 2 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502;
- 3 or
- 4 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances
- 5 constituting the criminal manufacture or distribution of dangerous drugs.
- 6 (c) (i) The department shall promptly disclose the results of an investigation to an individual
- 7 described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety
- 8 team established pursuant to 52-2-211 upon the determination that:
- 9 (A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or
- 10 Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or
- 11 (B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession
- 12 of a Schedule I or Schedule II drug that is prohibited by state law.
- 13 (ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted
- 14 to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have
- 15 contact with drug paraphernalia as defined in 45-10-101.
- 16 (d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be
- 17 released within 5 business days to the county attorney of the county in which the acts that are the subject of a
- 18 report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual
- 19 exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a)
- 20 and to a county or regional interdisciplinary child information and school safety team established pursuant to
- 21 52-2-211.
- 22 (ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides
- 23 confidential services to victims of sexual assault shall report to the department as provided in this part without
- 24 disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.
- 25 (iii) When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of
- 26 sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual
- 27 exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a

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1 department, a peace officer, or the county attorney who has reason to believe any child is in immediate or
2 apparent danger of harm may immediately remove the child and place the child in a protective facility. After
3 ensuring that the child is safe, the department may make a request for further assistance from the law
4 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the
5 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
6 time the placement is made or as soon after placement as possible. Notification under this subsection must:

7 (a) include the reason for removal;

8 (b) include information regarding the option for an emergency protective services hearing within 5
9 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

10 (c) provide contact information for the child protection specialist, the child protection specialist's
11 supervisor, and the office of state public defender; and

12 (d) advise the parents, parent, guardian, or other person having physical or legal custody of the
13 child that the parents, parent, guardian, or other person:

14 (i) has the right to receive a copy of the affidavit as provided in subsection (6);

15 (ii) has the right to attend and participate in an emergency protective services hearing, if one is
16 requested, and the show cause hearing, including providing statements to the judge;

17 (iii) may have a support person present during any in-person meeting with the child protection
18 specialist concerning emergency protective services; and

19 (iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.

20 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
21 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
22 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
23 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
24 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
25 member of the household, the department shall take appropriate steps for the protection of the child, which may
26 include:

27 (a) making reasonable efforts to protect the child and prevent the removal of the child from the

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(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the child protection specialist shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Terminates June 30, 2023—sec. 8, Ch. 529, L. 2021.)

41-3-301. (Effective July 1, 2023) Emergency protective service. (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must:

(a) include the reason for removal;

(b) include information regarding the emergency protective services and show cause hearings and the purpose of the hearings; and

(c) advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services.

(2) If a child protection specialist, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the

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1 stipulated by the parties pursuant to 41-3-434.

2 (8) If the department determines that a petition for immediate protection and emergency protective
3 services must be filed to protect the safety of the child, the child protection specialist shall interview the parents
4 of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be
5 filed. The district court may immediately issue an order for immediate protection of the child.

6 (9) The department shall make the necessary arrangements for the child's well-being as are
7 required prior to the court hearing."
8

9 **Section 31.** Section 41-3-306, MCA, is amended to read:

10 **"41-3-306. (Temporary) Emergency protective services hearing on request – exceptions. (1) (a)**

11 If requested by the parents, parent, guardian, or other person having physical or legal custody of a child
12 removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services
13 hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5
14 business days.

15 (b) The department shall provide notification of the option for the hearing as required under 41-3-
16 301.

17 (c) A hearing is not required if the child is released prior to the time of the requested hearing.

18 (2) The hearing may be held in person, by videoconference, or, if no other means are available, by
19 telephone.

20 (3) The child and the child's parents, parent, guardian, or other person having physical or legal
21 custody of the child must be represented by counsel at the hearing.

22 (4) If the court determines that continued out-of-home placement is needed, the court shall:

23 (a) establish guidelines for visitation by the parents, parent, guardian, or other person having
24 physical or legal custody of the child pending the show cause hearing; and

25 (b) review the availability of options for a kinship placement and make recommendations if
26 appropriate.

27 (5) The court may direct the department to develop and implement a treatment plan before the

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1 stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if
2 a plan is developed.

3 (6) If the court determines continued removal is not appropriate, the child must be immediately
4 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

5 (7) This section does not apply to cases involving an Indian child who is subject to the federal
6 Indian Child Welfare Act.

7 (8) The emergency protective services hearing is an emergency proceeding for the purposes of
8 [sections 1 through 20 19 16 18] and is not subject to the notice requirements of [sections 1 through 20 19 16
9 18]."
10

11 **Section 32.** Section 41-3-307, MCA, is amended to read:

12 **"41-3-307. (Temporary) Voluntary prehearing conferences -- pilot project counties.** (1) The
13 parents, parent, guardian, or other person having physical or legal custody of a child who has been removed
14 from the home pursuant to 41-3-301 may participate in a conference within 5 days of the child's removal and
15 before a show cause hearing held by the court if the court is participating in a pilot project testing the
16 effectiveness of prehearing conferences.

17 (2) A prehearing conference may be held under this section only if it involves:

- 18 (a) the parents, parent, guardian, or other person having physical or legal custody of the child;
19 (b) the person's legal counsel;
20 (c) the county attorney's office; and
21 (d) a department social worker.

22 (3) To the greatest degree possible using available funding, the meetings must be conducted by
23 an independent and trained facilitator.

24 (4) At a minimum, the meetings must involve discussion of:

- 25 (a) the child's current placement and options for continued placement if the child remains out of the
26 home;
27 (b) whether other options exist for an in-home safety plan or resource that may allow the child to

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(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4 3], the standards of proof required for legal relief under the federal Indian Child Welfare Act and [sections 1 through 20 19 46 18] apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act and [sections 1 through 20 19 46 18], if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

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(b) the full name, age, and address of the child and the name and address of the child's parents or the guardian or person having legal custody of the child; and

(c) the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1 through 20 19 46 18], if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to

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1 efforts at providing preservation or reunification services, the child's health and safety are of paramount
2 concern.

3 (2) Except in a proceeding subject to the federal Indian Child Welfare Act or [sections 1 through 20
4 19 16 18], the department may, at any time during an abuse and neglect proceeding, make a request for a
5 determination that preservation or reunification services need not be provided. If an indigent parent is not
6 already represented by counsel, the court shall immediately provide for the appointment or assignment of
7 counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a
8 finding that the department need not make reasonable efforts to provide preservation or reunification services if
9 the court finds that the parent has:

10 (a) subjected a child to aggravated circumstances, including but not limited to abandonment,
11 torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

12 (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate
13 homicide of a child;

14 (c) committed aggravated assault against a child;

15 (d) committed neglect of a child that resulted in serious bodily injury or death; or

16 (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and
17 the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately
18 care for the child at issue.

19 (3) Preservation or reunification services are not required for a putative father, as defined in 42-2-
20 201, if the court makes a finding that the putative father has failed to do any of the following:

21 (a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

22 (b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

23 (i) visiting the child at least monthly when physically and financially able to do so; or

24 (ii) having regular contact with the child or with the person or agency having the care and custody
25 of the child when physically and financially able to do so; and

26 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the
27 child was not in the physical custody of the other parent.

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(2) Except as provided in subsections (3) through (5), the court shall immediately appoint the office of state public defender to assign counsel for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act or [sections 1 through ~~20 19 16~~ 18].

(3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

(5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through ~~20 19 16~~ 18], a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:

(a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

(b) the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel."

Section 36. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services -- order -- service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's

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1 federal Indian Child Welfare Act or [sections 1 through 20 19 16 18], clear and convincing evidence based on
2 the petition and affidavit, the court may issue an order for immediate protection of the child. The court shall
3 consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to
4 the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or
5 [sections 1 through 20 19 16 18], clear and convincing evidence, the court may issue an order granting the
6 following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

7 (a) the right of entry by a peace officer or department worker;

8 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to
9 care provided by a noncustodial parent, kinship or foster family, group home, or institution;

10 (c) the right of the department to locate, contact, and share information with any extended family
11 members who may be considered as placement options for the child;

12 (d) a requirement that the parents, guardian, or other person having physical or legal custody
13 furnish information that the court may designate and obtain evaluations that may be necessary to determine
14 whether a child is a youth in need of care;

15 (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the
16 home to allow the child to remain in the home;

17 (f) a requirement that the parent provide the department with the name and address of the other
18 parent, if known, unless parental rights to the child have been terminated;

19 (g) a requirement that the parent provide the department with the names and addresses of
20 extended family members who may be considered as placement options for the child who is the subject of the
21 proceeding; and

22 (h) any other temporary disposition that may be required in the best interests of the child that does
23 not require an expenditure of money by the department unless the court finds after notice and a hearing that the
24 expenditure is reasonable and that resources are available for payment. The department is the payor of last
25 resort after all family, insurance, and other resources have been examined.

26 (3) An order for removal of a child from the home must include a finding that continued residence
27 of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best

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1 made by the affected child is admissible at the hearing. The parent, guardian, or other person may be
2 represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

3 (4) At the show cause hearing, the court shall explain the procedures to be followed in the case
4 and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or
5 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or sections 1
6 through 20 19 16 18, if applicable, and the right to challenge the allegations contained in the petition. The
7 parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to
8 admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to
9 determine whether the notice requirements of the federal Indian Child Welfare Act or section 8 7, if applicable,
10 have been met.

11 (5) Except as provided in the federal Indian Child Welfare Act or sections 1 through 20 19 16 18,
12 if applicable, the court shall make written findings on issues including but not limited to the following:

13 (a) whether the child should be returned home immediately if there has been an emergency
14 removal or remain in temporary out-of-home care or be removed from the home;

15 (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the
16 home would be contrary to the child's best interests and welfare;

17 (c) whether the department has made reasonable efforts to avoid protective placement of the child
18 or to make it possible to safely return the child to the child's home;

19 (d) financial support of the child, including inquiry into the financial ability of the parents, guardian,
20 or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and
21 treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

22 (e) whether another hearing is needed and, if so, the date and time of the next hearing.

23 (6) The court may consider:

24 (a) terms and conditions for parental visitation; and

25 (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are
26 needed.

27 (7) Following the show cause hearing, the court may enter an order for the relief requested or

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1 whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers
2 relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is
3 admissible according to the Montana Rules of Evidence.

4 (4) In a case in which abandonment has been alleged by the county attorney, the attorney general,
5 or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person
6 appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

7 (a) the extent to which the child has been cared for, nurtured, or supported by a person other than
8 the child's parents; and

9 (b) whether the child was placed or allowed to remain by the parents with another person for the
10 care of the child, and, if so, then the court shall accept evidence regarding:

11 (i) the intent of the parents in placing the child or allowing the child to remain with that person;

12 (ii) the continuity of care the person has offered the child by providing permanency or stability in
13 residence, schooling, and activities outside of the home; and

14 (iii) the circumstances under which the child was placed or allowed to remain with that other
15 person, including:

16 (A) whether a parent requesting return of the child was previously prevented from doing so as a
17 result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

18 (B) whether the child was originally placed with the other person to allow the parent to seek
19 employment or attend school.

20 (5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the
21 examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and
22 the mediation privilege granted by 26-1-813.

23 (6) (a) If the court determines that the child is not an abused or neglected child, the petition must
24 be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

25 (b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional
26 hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required
27 investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The

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1 for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-
2 438, 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (9) if the
3 guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

4 (2) The court may appoint a guardian for a child pursuant to this section if the following facts are
5 found by the court:

6 (a) the department has given its written consent to the appointment of the guardian, whether the
7 guardianship is to be subsidized or not;

8 (b) if the guardianship is to be subsidized, the department has given its written consent after the
9 department has considered initiating or continuing financial subsidies pursuant to subsection (9);

10 (c) the child has been adjudicated a youth in need of care;

11 (d) the department has made reasonable efforts to reunite the parent and child, further efforts to
12 reunite the parent and child by the department would likely be unproductive, and reunification of the parent and
13 child would be contrary to the best interests of the child;

14 (e) the child has lived with the potential guardian in a family setting and the potential guardian is
15 committed to providing a long-term relationship with the child;

16 (f) it is in the best interests of the child to remain or be placed with the potential guardian;

17 (g) either termination of parental rights to the child is not in the child's best interests or parental
18 rights to the child have been terminated, but adoption is not in the child's best interests; and

19 (h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as
20 defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4 3], the Indian child's tribe
21 has received notification from the state of the initiation of the proceedings.

22 (3) In the case of an abandoned child, the court may give priority to a member of the abandoned
23 child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if
24 placement with the extended family member is in the best interests of the child. If more than one extended
25 family member has requested to be appointed as guardian, the court may determine which extended family
26 member to appoint in the same manner provided for in 41-3-438(4).

27 (4) The entry of a decree of guardianship pursuant to this section terminates the custody of the

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1 adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which
2 sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

3 (d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through
4 (2)(e);

5 (e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

6 (f) the child is an adjudicated youth in need of care and both of the following exist:

7 (i) an appropriate treatment plan that has been approved by the court has not been complied with
8 by the parents or has not been successful; and

9 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a
10 reasonable time.

11 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
12 reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely
13 result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit,
14 unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall
15 consider but is not limited to the following:

16 (a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to
17 render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a
18 reasonable time;

19 (b) a history of violent behavior by the parent;

20 (c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
21 ability to care and provide for the child; and

22 (d) present judicially ordered long-term confinement of the parent.

23 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
24 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the
25 child.

26 (4) A treatment plan is not required under this part upon a finding by the court following hearing if:

27 (a) the parent meets the criteria of subsections (1)(a) through (1)(e);

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1 (g) whether court orders from any other proceeding have been issued terminating parental rights
2 to the child that is the subject of the petition;

3 (h) any other evidence supporting termination of the legal rights that a person has with regard to
4 the child; and

5 (i) a request for temporary custody of the child prior to the adoption.

6 (2) The petitioner shall file with the petition for termination of parental rights the following
7 documents received in support of the petition:

8 (a) any relinquishments and consents to adoption;

9 (b) any denials of paternity;

10 (c) any acknowledgments of paternity and denial of parental rights;

11 (d) any affidavits from the putative father registry that have been executed by the department;

12 (e) the adoptive decision support services report required under 42-2-409;

13 (f) proof of prior service of any notice or acknowledgment of service or waiver of service received;

14 and

15 (g) proof of compliance with the federal Indian Child Welfare Act of 1978, [sections 1 through 20
16 19 16 18], and Interstate Compact on the Placement of Children, if applicable."

17

18 **Section 43.** Section 42-4-102, MCA, is amended to read:

19 **"42-4-102. Duties of placing parent.** (1) A parent who is directly placing a child for adoption shall
20 execute a voluntary relinquishment and consent to adopt, including:

21 (a) receiving the adoptive decision support services required by 42-2-409; and

22 (b) if the parent is a minor, being advised by legal counsel other than the attorney representing the
23 prospective adoptive parent.

24 (2) A placing parent shall identify and provide information on the location of any other legal parent
25 or guardian of the child and any other person required to receive notice under 42-2-605, including:

26 (a) any current spouse;

27 (b) any spouse who is the other birth parent and to whom the parent was married at the probable

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(ii) the name and address of each prospective adoptive parent;

(iii) the name and address or expected date and place of birth of the child;

(iv) the identity and information on the location of any other legal parent or guardian of the child

and any other person required to receive notice under 42-2-605, including any current spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child, and any adoptive parent;

(v) all relevant information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 20 19 46 18]; and

(vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

(b) a relinquishment and consent to adoption of the child by the adoptive parent;

(c) the adoptive decision support services report required by 42-2-409;

(d) the medical and social history disclosures required by 42-3-101;

(e) a report of disbursements identifying all payments made to or to the benefit of the placing parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement by each person furnishing information in the report attesting to the truthfulness of the information furnished by that person;

(f) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth;

(g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and

(h) the preplacement evaluation.

(2) The notice of parental placement must be signed by the parent making the placement."

Section 45. Section 42-4-203, MCA, is amended to read:

"42-4-203. Duties of placing parent. (1) A parent who is placing a child for adoption shall comply with the provisions for executing a voluntary relinquishment and consent to adopt.

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- 1 (d) an assessment of adaptation by the prospective adoptive parent to parenting the child;
2 (e) a statement that the 6-month postplacement evaluation period has been complied with or
3 should be waived;
4 (f) any other circumstances and conditions that may have a bearing on the adoption and of which
5 the court should have knowledge;
6 (g) whether the agency waives notice of the proceeding;
7 (h) a statement that any applicable provision of law governing an interstate or intercountry
8 placement of the child has been complied with; and
9 (i) a statement of compliance with any applicable provisions of the federal Indian Child Welfare
10 Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20 19 16 18].
11 (4) The evaluation must contain a definite recommendation stating the reasons for or against the
12 proposed adoption."
13

14 **Section 47.** Section 42-5-101, MCA, is amended to read:

15 **"42-5-101. Petition for adoption.** (1) A petition for adoption must be verified and must specify:

- 16 (a) the full names, ages, and place and duration of residence of the petitioners;
17 (b) the current marital status of petitioners and, if married, the place and date of the marriage;
18 (c) the circumstances under which the petitioners obtained physical custody of the child and the
19 name of the individual or agency that placed the child;
20 (d) the date and place of birth of the child, if known;
21 (e) the name used for the child in the proceeding and, if a change in name is desired, the full name
22 by which the child is to be known;
23 (f) that it is the desire of the petitioners that the relationship of parent and child be established
24 between the petitioners and the child and to have all the rights and be subject to all the duties of that
25 relationship;
26 (g) a full description and statement of value of all property owned or possessed by the child;
27 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the

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1 relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child,
2 and familial stability.

3 (2) In a contested adoption proceeding involving a child, the court shall consider the factors set out
4 in subsection (1) and shall also consider:

5 (a) the nature and length of any relationship already established between a child and any person
6 seeking to adopt the child;

7 (b) the nature of any family relationship between the child and any person seeking to adopt the
8 child and whether that person has established a positive emotional relationship with the child;

9 (c) the harm that could result to the child from a change in placement;

10 (d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

11 (e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or
12 the department or agency whose consent to the adoption is required.

13 (3) In an Indian child placement, the court shall determine if the requirements of the federal Indian
14 Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20 49 46 18] have been met."

15

16 **Section 49.** Section 47-1-104, MCA, is amended to read:

17 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at**

18 **public expense.** (1) There is a statewide public defender system, which is required to deliver public defender
19 services in all courts in this state. The system is supervised by the director.

20 (2) The director shall approve a strategic plan for service delivery and divide the state into not
21 more than 11 public defender regions. The director may establish a regional office to provide public defender
22 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in
23 the region, or utilize other service delivery methods as appropriate and consistent with the purposes described
24 in 47-1-102.

25 (3) When a court orders the assignment of a public defender, the appropriate office shall
26 immediately assign a public defender qualified to provide the required services. The director shall establish
27 protocols to ensure that the offices make appropriate assignments in a timely manner.

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(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on
Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental
Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in
a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a
mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public
defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad
litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service
for the statewide public defender system and does not result in a conflict of interest."

Section 50. Section 52-2-117, MCA, is amended to read:

"52-2-117. Indian child welfare specialist. (1) The director of the department shall appoint a
qualified person to act as an Indian child welfare specialist.

(2) The duties of the specialist include:

(a) developing Indian foster homes and other Indian placement resources;

(b) providing technical advice to tribal, state, and county agencies and district courts on matters
pertaining to Indian child welfare;

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the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

~~(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425 ;~~

~~(iv)(iii)~~ for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

~~(v)(iv)~~ for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

~~(vi)(v)~~ for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

~~(vii)(vi)~~ for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112; and

~~(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;~~

~~(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and~~

~~(x)(vii)~~ for a witness in a criminal grand jury proceeding, as provided in 46-4-304. ;

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense

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(b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

~~NEW SECTION. Section 52. CONTINGENT VOIDNESS. (1) IF THE INDIAN CHILD WELFARE ACT OF 1978, PUBLIC LAW 95-608, IS DETERMINED BY THE UNITED STATES SUPREME COURT TO BE UNCONSTITUTIONAL OR UNENFORCEABLE IN ITS ENTIRETY IN HAALAND V. BRACKEEN, NO. 21-376, THEN [THIS ACT] IS VOID.~~

~~(2) ON DETERMINATION BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES THAT THE CONTINGENCY DESCRIBED IN SUBSECTION (1) HAS BEEN MET, THE DEPARTMENT SHALL NOTIFY THE CODE COMMISSIONER.~~

NEW SECTION. Section 54. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2023.

(2) [Section 33 ~~32 29 31~~] and this section are effective on passage and approval.

~~NEW SECTION. Section 54. TERMINATION. [THIS ACT] TERMINATES JUNE 30, 2025.~~

- END -

CONFERENCE COMMITTEE ON HB 317

April 28, 2023

VOTE TABULATION - HB 317

Sen. McGillvray made a Motion that HB 317 Be Amended
YEAS – 5 NAYS - 1

Y	Small, Jason
Y	McGillvray, Tom
Y	Webber, Susan
N	Windy Boy, Jonathan
Y	Oblander, Greg
Y	Etchart, Jodee

CONFERENCE COMMITTEE ON HB 317

April 28, 2023

VOTE TABULATION - HB 317

Sen. McGillvray made a Motion that HB 317 Be Amended

YEAS – 5 NAYS - 1

Y	Small, Jason
Y	McGillvray, Tom
Y	Webber, Susan
N	Windy Boy, Jonathan
Y	Oblander, Greg
Y	Etchart, Jodee

CONFERENCE COMMITTEE ON HB 317

April 28, 2023

VOTE TABULATION - HB 317

Sen. McGillvray made a Motion that HB 317 Be Amended

YEAS – 6 NAYS - 0

Y	Small, Jason
Y	McGillvray, Tom
Y	Webber, Susan
Y	Windy Boy, Jonathan
Y	Oblander, Greg
Y	Etchart, Jodee

CONFERENCE COMMITTEE ON HB 317
April 28, 2023
VOTE TABULATION - HB 317

Sen. McGillvray made a Motion that HB 317 Be Amended
YEAS – 3 NAYS - 3

Y	Small, Jason
N	McGillvray, Tom
Y	Webber, Susan
Y	Windy Boy, Jonathan
N	Oblander, Greg
N	Etchart, Jodee

CONFERENCE COMMITTEE ON HB 317
April 28, 2023
VOTE TABULATION - HB 317

Sen. McGillvray made a Motion that HB 317 Accepted as Amended
YEAS – 3 NAYS - 3

Y	Small, Jason
N	McGillvray, Tom
Y	Webber, Susan
Y	Windy Boy, Jonathan
N	Oblander, Greg
N	Etchart, Jodee

Visitors Register

CONFERENCE COMMITTEE HB317

Date 4/28/23

Bill No. HB 317 Sponsor(s) Rep Windy Boy

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Name and Address	Representing	Support	Oppose	Inf.
Patrick YAWARKE	Blackfeet	X		
Sam S. Leger	HA 42	X		
Robin Turney	self	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.